

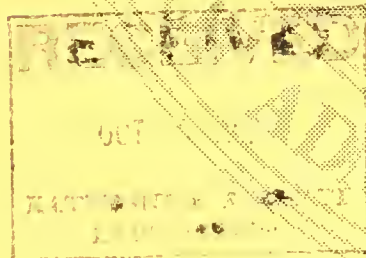
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# ***NORTH CAROLINA REGISTER***

**VOLUME 12 • ISSUE 7 • Pages 505 - 611  
October 1, 1997**

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Pharmacy, Board of  
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Public Education  
Secretary of State  
Transportation  
Rules Review Commission  
Contested Case Decisions



## **PUBLISHED BY**

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Rules Division  
PO Drawer 27447  
Raleigh, NC 27611-7447  
Telephone (919) 733-2678  
Fax (919) 733-3462*

For those persons that have questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

**Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.**

Office of Administrative Hearings  
Rules Division  
Capehart-Crocker House (919) 733-2678  
424 North Blount Street (919) 733-3462 FAX  
Raleigh, North Carolina 27601-2817  
  
contact: Molly Masich, Director APA Services mmasich@oah.state.nc.us  
Ruby Creech, Publications Coordinator rcreech@oah.state.nc.us

**Fiscal Notes & Economic Analysis**

Office of State Budget and Management  
116 West Jones Street (919) 733-7061  
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX  
  
contact: Mark Sisak, Economist III msisak@osbm.state.nc.us  
Anna Tefft, Economist II atefft@osbm.state.nc.us

**Rule Review and Legal Issues**

Rules Review Commission  
1307 Glenwood Ave., Suite 159 (919) 733-2721  
Raleigh, North Carolina 27605 (919) 733-9415 FAX  
  
contact: Joe DeLuca Jr., Staff Director Counsel  
Bobby Bryan, Staff Attorney

**Legislative Process Concerning Rule Making**

Joint Legislative Administrative Procedure Oversight Committee  
545 Legislative Office Building  
300 North Salisbury Street (919) 733-2578  
Raleigh, North Carolina 27611 (919) 715-5460 FAX  
  
contact: Mary Shuping, Staff Liaison marys@ms.ncga.state.nc.us

**County and Municipality Government Questions or Notification**

NC Association of County Commissioners  
215 North Dawson Street (919) 715-2893  
Raleigh, North Carolina 27603  
  
contact: Jim Blackburn or Rebecca Troutman  
  
NC League of Municipalities  
215 North Dawson Street (919) 715-4000  
Raleigh, North Carolina 27603  
  
contact: Paula Thomas

# NORTH CAROLINA REGISTER



**Volume 12, Issue 7**  
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This issue contains documents officially filed  
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Office of Administrative Hearings  
Rules Division  
424 North Blount Street (27601)  
PO Drawer 27447  
Raleigh, NC 27611-7447  
(919) 733-2678  
FAX (919) 733-3462

Julian Mann III, Director  
James R. Scarcella Sr., Deputy Director  
Molly Masich, Director of APA Services  
Ruby Creech, Publications Coordinator  
Jean Shirley, Editorial Assistant  
Linda Richardson, Editorial Assistant

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# NORTH CAROLINA REGISTER

## Publication Schedule

(August 1997 - May 1998)

FILING DEADLINES			NOTICE OF RULE-MAKING PROCEEDINGS		NOTICE OF TEXT (either column A or column B)						
volume and issue number	issue date	last day for filing	60 <sup>th</sup> day	earliest register issue for publication of text	earliest date for public hearing	A. non-substantial economic impact			B. substantial economic impact		
						end of required comment period	deadline to submit to RRC for review at next RRC meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next RRC meeting	first legislative day of the next regular session
12:03	08/01/97	07/11/97	09/30/97	10/01/97	08/18/97	09/02/97	09/22/97	05/11/98	09/30/97	10/20/97	05/11/98
12:04	08/15/97	07/25/97	10/14/97	10/15/97	09/02/97	09/15/97	09/22/97	05/11/98	10/14/97	10/20/97	05/11/98
12:05	09/02/97	08/12/97	11/03/97	11/14/97	09/17/97	10/02/97	10/20/97	05/11/98	11/03/97	11/20/97	05/11/98
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12:07	10/01/97	09/10/97	12/01/97	12/15/97	10/16/97	10/31/97	11/20/97	05/11/98	12/01/97	12/22/97	05/11/98
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12:22	05/15/98	04/24/98	07/14/98	07/15/98	06/01/98	06/15/98	06/22/98	01/27/99	07/14/98	07/20/98	01/27/99

## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL	FILING DEADLINES	NOTICE OF RULE-MAKING PROCEEDINGS	NOTICE OF TEXT
<p>The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:</p> <ol style="list-style-type: none"> <li>(1) temporary rules;</li> <li>(2) notices of rule-making proceedings;</li> <li>(3) text of proposed rules;</li> <li>(4) text of permanent rules approved by the Rules Review Commission;</li> <li>(5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;</li> <li>(6) Executive Orders of the Governor;</li> <li>(7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;</li> <li>(8) orders of the Tax Review Board issued under G.S. 105-241.2; and</li> <li>(9) other information the Codifier of Rules determines to be helpful to the public.</li> </ol>	<p><b>ISSUE DATE:</b> The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday, or holiday for State employees.</p> <p><b>LAST DAY FOR FILING:</b> The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.</p>	<p><b>END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:</b> This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.</p> <p><b>EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:</b> The date of the next issue following the end of the comment period.</p>	<p><b>EARLIEST DATE FOR PUBLIC HEARING:</b> The hearing date shall be at least 15 days after the date a notice of the hearing is published.</p> <p><b>END OF REQUIRED COMMENT PERIOD</b></p> <p>(1) <b>RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:</b> An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.</p> <p>(2) <b>RULE WITH SUBSTANTIAL ECONOMIC IMPACT:</b> An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.</p> <p><b>DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:</b> The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.</p> <p><b>FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:</b> This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.</p>

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

**EXECUTIVE ORDER NO. 117  
GOVERNOR'S COMMISSION ON JUVENILE  
CRIME AND JUSTICE**

WHEREAS, North Carolinians deserve to live, work and attend school in communities without fear of crime, drugs and violence; and,

WHEREAS, the state has taken important steps to protect its citizens in recent years by providing tougher sentences for violent criminals, keeping dangerous criminals behind bars longer, and boosting efforts to deter young people from a life of crime; and,

WHEREAS, North Carolina continues to face challenges fighting crime, especially juvenile crime, which is rising across the country; and,

WHEREAS, in North Carolina juvenile arrests for violent crime have risen a dramatic 172%, arrests of juveniles for weapon offenses have skyrocketed 482%, and arrests of juveniles for drug violations have soared 523% over the last ten years; and,

WHEREAS, North Carolina's elected officials and community leaders are committed to developing strong, new approaches to fighting juvenile crime by making sure young offenders know they will face tough consequences for their actions, holding parents more responsible for their children, and keeping at-risk youngsters on the right path and away from crime and drugs with stronger community-based prevention efforts, and,

WHEREAS, leaders should develop a plan to fight juvenile crime by revising the juvenile justice system to bring it in line with the kinds of crimes committed by juveniles today, stepping up the state's prevention efforts to keep at-risk young people from turning to a life of crime and drugs, developing sanctions for first-time juvenile offenders and tougher punishment for violent offenders, and streamlining, the state agency structure for dealing with juvenile crime.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, **IT IS ORDERED:**

**Section 1. Governor's Commission on Juvenile Crime and Justice Established.**

The Governor's Commission on Juvenile Crime and Justice is hereby established. The Commission shall consist of eighteen voting members appointed by the Governor as follows: the Secretary of Crime Control and Public Safety; the Chief Justice of the Supreme Court of North Carolina, four members of the North Carolina Senate; four members of the North Carolina House of Representatives; one Superior Court Judge; one District Court Judge; one District Attorney; the chairman

of the Governor's Crime Commission; and four at-large members representing law enforcement, child advocacy interests, public schools, and the general public. There shall also be five non-voting ex-officio members appointed by the Governor as follows: the Secretary of Correction; the Secretary of Administration, the Secretary of Health and Human Resources; the State Superintendent of Public Instruction; and, the Director of the Administrative Office of the Courts.

**Section 2. Chair, Vice, Chair, and Honorary Co-Chairs.**

The Governor shall serve as the Chair of the Commission and have the power to vote. The Secretary of Crime Control and Public Safety shall be the Vice-Chair and shall serve in the absence of the Chair. The Speaker of the North Carolina House of Representatives and the President Pro Tempore of the North Carolina Senate shall serve as Honorary Co-Chairs of the Commission.

**Section 3. Commission Duties and Responsibilities.**

The Commission shall conduct a thorough and comprehensive review of the juvenile criminal justice system and shall make specific recommendations in the following areas:

- (a) Revisions of the Juvenile Code;
- (b) Juvenile crime prevention efforts, initiatives, and drug education;
- (c) Appropriate and accountable sanctions for all juvenile offenders; and,
- (d) The state agency structure of the juvenile justice system.

The Commission shall also address other related issues assigned to it by the Chair.

**Section 4. Commission Meetings.**

The Commission shall meet at least twice monthly and shall meet more often at the call of the Chair. Meetings shall be conducted in compliance with state's Open Meetings Law.

**Section 5. Advisory Groups.**

The Governor shall establish four advisory groups to provide recommendations to the Commission. Members of each advisory group shall be appointed by the Governor. The four advisory groups shall be as follows:

- (a) Juvenile Code Revision Advisory Group;
- (b) Delinquency Prevention and Drug Education Advisory Group;
- (c) Accountable Sanctions Advisory Group; and,
- (d) Juvenile Justice System Agency Structure Advisory Group.

The Governor shall appoint an Advisory Chair for each advisory group. The advisory groups shall meet monthly and shall meet more often at the call of the Advisory Chair. Meetings shall be conducted in compliance with the state's Open Meeting Laws.

**Section 6. Cooperation of Governmental Agencies.**

The heads of all state departments and agencies shall, to the extent permitted by law, provide the Commission with information required to achieve the purposes of this Order.

**Section 7. Public Hearings.**

The Commission is authorized to hold public hearings on the specific issues under consideration by it, to visit facilities and institutions related to or involved in the specific issues under its consideration, and to receive input from citizens about these issues.

**Section 8. Per Diem, Travel, and Subsistence.**

Members of the Commission and the four advisory groups shall serve without compensation but, subject to availability of funds, shall be eligible for per diem, travel, and subsistence as provided by North Carolina rules, regulations, and General Statutes.

**Section 9. Reporting Requirements.**

The Commission shall present a final report including appropriate administrative and legislative recommendations to the Governor no later than February 2, 1998.

**Section 10. Staff support.**

The Governor shall appoint an Executive Director who shall provide staff for the Commission through funds administered by the Governor's Crime Commission.

**Section 11. Effective Date.**

This order is effective immediately and shall remain in effect until rescinded by the Governor.

Done in the Capital City of Raleigh, North Carolina,  
this the 7th day of September, 1997.



U.S. Department of Justice

Civil Rights Division

IKP:DHH:NT:jdp  
DJ 166-012-3  
97-2027

*Voting Section*  
*P.O. Box 66128*  
*Washington, D.C. 20035-6128*

David A. Holec, Esq.  
City Attorney  
P.O. Box -/207  
Greenville, North Carolina 27835

August 18, 1997

Dear Mr. Holec:

This refers to the annexation (Ordinance No. 97-57) and its designation to a district of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 14, 1997.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Isabelle Katz Pinzler  
Acting Assistant Attorney General  
Civil Rights Division

By:

Elizabeth Johnson  
Chief, Voting Section



*A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.*

## TITLE 12 - DEPARTMENT OF JUSTICE

### CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

#### SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

*Notice of Rule-making Proceedings is hereby given by the NC Sheriffs' Education and Training Standards Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

#### Citation to Existing Rules Affected by this Rule-Making:

*12 NCAC 10B .0103, .0401 - .0403, .0406 - .0409, .0701 - .0702, .1101 - .1104, .1301 - .1304, .2002, .2101 - .2102, .2104 - .2105. Other rules may be proposed in the course of the rule-making process.*

**Authority for the rule-making:** G.S. 17-E

#### Statement of the Subject Matter:

*12 NCAC 10B .0103 - Sets out definitions for terms used within 12 NCAC 10B.*

*12 NCAC 10B .0401 - Identifies who must meet the certification requirements as set out in 12 NCAC 10B.*

*12 NCAC 10B .0402 - Requires all justice officers to serve a probationary period and specifies when that one-year period begins.*

*12 NCAC 10B .0403 - Sets out requirements which must be met for probationary certification to be issued.*

*12 NCAC 10B .0406 - Sets out requirements which must be met for the lateral transfer and reinstatement of certification.*

*12 NCAC 10B .0407 - Sets out requirements for the certification of a former Sheriff as a justice officer.*

*12 NCAC 10B .0408 - Sets out what documentation must be submitted for probationary certification to be issued.*

*12 NCAC 10B .0409 - Sets out what certification records the employing agency must retain.*

*12 NCAC 10B .0701 - Sets out the purpose for Section .0700 to establish minimum standards for training of sheriffs' department personnel.*

*12 NCAC 10B .0702 - Sets out the administration of justice officer schools.*

*12 NCAC 10B .1101 - Sets out the purpose for Section .1100 to establish a service award program.*

*12 NCAC 10B .1102 - Sets out the general provisions for eligibility for service awards.*

*12 NCAC 10B .1103 - Sets out specific requirements for eligibility for the Intermediate Service Award.*

*12 NCAC 10B .1104 - Sets out specific requirements for eligibility for the Advanced Service Award.*

*12 NCAC 10B .1300 - Reserved for future codification.*

*12 NCAC 10B .2002 - Sets out topical areas established as Justice Officers' In-Service Training Program.*

*12 NCAC 10B .2101 - Sets out Department Head Responsibilities for the Justice Officers' Firearms In-service Training Requalification Program.*

*12 NCAC 10B .2102 - Sets out requirements and responsibilities established for instructors in the Firearms In-service Training Requalification Program.*

*12 NCAC 10B .2104 - Sets out who must comply with the In-Service Requalification and what must be done to comply.*

*12 NCAC 10B .2105 - Sets what happens to those who fail to comply.*

#### Reason for Proposed Action:

*12 NCAC 10B .0103 - Rule changes will:*

- 1) define telecommunicator's date of appointment;*
- 2) modify the definition of "department head" to include the chief administrator of communication centers;*
- 3) expand the definition of dual certification to include telecommunicators; and*
- 4) define telecommunicator.*

*12 NCAC 10B .0401 - Rule change will set out that telecommunicators under the control of the Sheriff must be certified and telecommunicators not under the Sheriff's control may be presented to the Division for certification.*

*12 NCAC 10B .0402 - Rule change will set out when the probationary period for a telecommunicator will begin.*

*12 NCAC 10B .0403 - Rule change will make rule applicable to telecommunicators.*

*12 NCAC 10B .0406 - Rule change will allow for the reinstatement of a telecommunicator's certification.*

*12 NCAC 10B .0407 - Rule change will allow for the certification of a former Sheriff as a telecommunicator.*

*12 NCAC 10B .0408 - Rule change will allow for the waiver of compliance with this Rule, provided an individual holds certification in another capacity (to include telecommunicator) at the same agency and changes capacity (to include telecommunicators) with no break in service.*

*12 NCAC 10B .0409 - Rule change will allow for the waiver of compliance with this Rule, provided an individual holds certification in another capacity at the same agency and*

changes capacity with no break in service.

**12 NCAC 10B .0701** - Rule change will substitute "justice officers" for "sheriffs' department personnel", so that it will apply to telecommunicators, as well as deputy sheriffs and detention officers.

**12 NCAC 10B .0702** - Rule change will set out administration matters concerning the Basic Telecommunicator Course.

**12 NCAC 10B .1101 - .1104** - Rule changes will specify that only deputy sheriffs and detention officer are eligible to apply for a service award.

**12 NCAC 10B .1300** - Rule adoption will set out Minimum Standards of Training for Telecommunicators as follows:

- 1) .1301 - Purpose;
- 2) .1302 - Basic Telecommunicator Course;
- 3) .1303 - Time Requirement for Completion of Basic Telecommunicator Course; and
- 4) .1304 - Evaluation for Training Waiver.

**12 NCAC 10B .2002, .2101 - .2102, .2104 - .2105** - Rule changes will make in-service Firearms Training and Requalification mandated only for deputy sheriffs and detention officers. Language, if left alone, would require all Justice Officers (which would include telecommunicators) to qualify annually.

**Comment Procedures:** Please contact the agency contact person with any questions or comments concerning this information.

Barbara D. Moore

NC Sheriffs' Education and Training Standards Commission  
Post Officer Drawer 629  
Raleigh, NC 27602  
(919) 716-6460

establishes standards for owners and/or operators of hazardous waste facilities (treatment, storage or disposal facilities). **15A NCAC 13A .0110** - Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities - Part 265 establishes interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities. **15A NCAC 13A .0111** - Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. Establishes standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities.

**Reason for Proposed Action:** The proposed amendment redesignates Paragraph (z) "Appendices to Part 264" as Paragraph (aa) in 15A NCAC 13A .0109 Standards For Owners/Operators of HWTSD Facilities - Part 264, and adds 40 CFR 264.1200 through 264.1202 (Subpart EE), "Hazardous Waste Munitions and Explosives Storage", to Paragraph (z). The proposed amendment redesignates Paragraph (w) "Appendices to 40 CFR Part 265" as Paragraph (x) and adds 40 CFR 265.1200 through 265.1202 (Subpart EE), Hazardous Waste Munitions and Explosives Storage", to 15A NCAC 13A .0110(w). The proposed amendment redesignates Paragraph (e) Appendices to 40 CFR Part 266 to (f) and adds 40 CFR 266.200 through 266.206 (Subpart M), "Military Munitions" to 15A NCAC 13A .0111(e); and a technical change in Paragraph (d) replaces 266.122 with 266.112.

**Comment Procedures:** Written comments may be submitted to Jimmy Carter, Chief, Hazardous Waste Section, Division of Waste Management, PO Box 29603, Raleigh, NC 27611-9603, by December 1, 1997.

**TITLE 15A - DEPARTMENT OF ENVIRONMENT,  
HEALTH, AND NATURAL RESOURCES**

**CHAPTER 13 - SOLID WASTE MANAGEMENT**

**Notice of Rule-making Proceedings** is hereby given by the Commission for Health Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rules it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rules Affected by this Rule-Making:** 15A NCAC 13A .0109 - .0111. Other rules may be proposed in the course of the rule-making process.

**Authority for the rule-making:** G.S. 130A-294(c), 150B-21.6

**Statement of the Subject Matter:** 15A NCAC 13A .0109 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities - Part 264

**TITLE 21 - OCCUPATIONAL LICENSING  
BOARDS**

**CHAPTER 50 - BOARD OF EXAMINERS OF  
PLUMBING, HEATING AND  
FIRE SPRINKLER CONTRACTORS**

**Notice of Rule-making Proceedings** is hereby given by the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rules it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rules Affected by this Rule-Making:** 21 NCAC 50 .0106 - Location of Office, .0202 - Obtaining Forms, .0301 - Qualifications Determined by Examination, .0306 - Applications: Issuance of License, .0404 - Active Employment, .0405 - Multiple Licenses, .0506 - Minor Repairs and Alterations, .0510 - License Requirements

Generally, .0511 - Fuel Piping, .1102 License Fees, .1104 - Fees for Copies of Records and Returned Checks, .1201 - Petition for Rule-making Hearings, .1205 - Notice Mailing List, .1206 - Additional Information, .1210 - Written Submissions, .1212 - Statement of Reasons for Decision and .1302 - Submission of Request for Ruling. Other rules may be proposed in the course of the rule-making process.

**Authority for the rule-making:** G.S. 87-16, 87-18, 87-21, 87-21(a), 87-21(a)(5), 87-21(a)(6), 87-21(a)(1), 87-21(b), 87-21(c), 87-21(g), 87-22, 87-26, 25-3-512, 150B-19

**Statement of the Subject Matter:** To amend rules to provide licensure, examination and fees to be paid for fuel piping license as required by act of the 1997 General Assembly, to repeal a rule rendered obsolete by the 1997 General Assembly with regard to mobile home connections, to charge a fee for returned checks, and to make editorial changes in other text not resulting in change of meaning or effect, and changes to show the new location of the Board offices.

**Reason for Proposed Action:** Legislature enacted by 1997 General Assembly in HB 408 and SB 996.

**Comment Procedures:** Written comments may be submitted to the Board at 3801 Wake Forest Rd., Suite 201, Raleigh, NC 27609 on or before January 1, 1998. Public hearing will be held at the offices of the Board at 3801 Wake Forest Rd., Suite 201, Raleigh, NC, at 8:30 a.m., November 19, 1997. Speakers will be limited to 5 minutes each and must advise the Board office of their desire to speak by noon the previous day.



*This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.*

**TITLE 10 - DEPARTMENT OF HUMAN  
RESOURCES**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the Secretary of Human Resources intends to amend rules cited as 10 NCAC 14V .7006. Notice of Rule-making Proceedings was published in the Register on July 1, 1997.

**Proposed Effective Date:** July 1, 1998

**Instructions on How to Demand a Public Hearing:** A demand for public hearing must be requested in writing within 15 days of this notice and addressed to Charlotte F. Hall, Division of MH/DD/SAS, 325 N. Salisbury Street, Albemarle Bldg., Raleigh, NC 27603-5906.

**Reason for Proposed Action:** The Court Order for assaultive and violent children contains general eligibility criteria for class membership. In order to comply with the specific operational criteria which were jointly agreed to by the parties in 1981, as a result of the Court Order, the number "two" should read "one" in Paragraph (b) of 10 NCAC 14V .7006.

**Comment Procedures:** Please submit written comments to Charlotte F. Hall, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS), 325 N. Salisbury Street, Albemarle Bldg., Suite 558, Raleigh, NC 27603-5906, FAX 919-733-8259. Comments will be accepted through October 31, 1997.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of state or local government funds. This Rule does not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

**CHAPTER 14 - MENTAL HEALTH,  
GENERAL**

**SUBCHAPTER 14V - RULES FOR MENTAL  
HEALTH, DEVELOPMENTAL DISABILITIES,  
AND SUBSTANCE ABUSE FACILITIES  
AND SERVICES**

**SECTION .7000 - SERVICES FOR ELIGIBLE  
ASSAULTIVE AND VIOLENT CHILDREN  
AND ADOLESCENTS**

**.7006 VIOLENT OR ASSAULTIVE BEHAVIOR  
DEFINED**

(a) To meet the criterion of violent or assaultive behavior, there shall be evidence in the minor's recent history (within the 12 months prior to the application or request for re-review of eligibility) or current functioning of one or more of the following:

- (1) physically attacks, with or without weapons against other persons or animals, or physical attacks resulting in property damage;
- (2) physically self-injurious behavior or serious suicidal attempts;
- (3) threatened attacks with a deadly weapon;
- (4) firesetting; or
- (5) predatory sexual behaviors.

(b) In addition, the behaviors shall meet ~~two~~ one or more of the following tests:

- (1) the attack shall be sufficiently severe that substantial harm to persons did result or could result without intervention;
- (2) the behavior shall have occurred with sufficient frequency to be considered a pattern of response (more than three times over a period of six months);
- (3) the behavior is extreme or out of proportion to the provocation, if any, or is not an age-appropriate reaction;
- (4) the behavior was sufficiently disruptive to lead to extrusion from or refusal for admittance to school, job, recreational setting, or treatment program;
- (5) the behavior resulted in severe measures of control, e.g., seclusion, restraints, or chemical controls; or
- (6) the behavior resulted in incarceration or institutionalization with the restrictive environment then "controlling" the behavior.

Authority G.S. 122C-3; 122C-112; 122C-194.

\*\*\*\*\*

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the DHR - Division of Medical Assistance intends to amend rule cited as 10 NCAC 26H .0213. Notice of Rule-making Proceedings was published in the Register on December 16, 1996.

**Proposed Effective Date:** August 1, 1998

A Public Hearing will be conducted at 1:30 p.m. on October 16, 1997 at the Division of Medical Assistance, 1985 Umstead Dr., Kirby Bldg., Room 132, Raleigh, NC.

**Reason for Proposed Action:** *This action is proposed in order to authorize additional Disproportionate Share payments to hospitals that provide services to clients of State Agencies meeting that agency's eligibility requirements.*

**Comment Procedures:** *Written comments concerning these rule-making actions must be submitted by December 1, 1997 to Portia Rochelle, APA Coordinator, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. Oral comments may be presented at the hearing. A fiscal note statement is available upon written request from the same address.*

**Fiscal Note:** *This Rule affects the expenditure or distribution of State funds. This Rule does not affect the expenditure or distribution of Local funds. This Rule does have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.*

## CHAPTER 26 - MEDICAL ASSISTANCE

### SUBCHAPTER 26H - REIMBURSEMENT FOR NURSING FACILITY SERVICES

#### SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

#### .0213 DISPROPORTIONATE SHARE HOSPITALS

(a) Hospitals that serve a disproportionate share of low-income patients and have a Medicaid inpatient utilization rate of not less than one percent are eligible to receive rate adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to the Division of Medical Assistance on or before April 1, 1991. The cost report data and financial information to qualify as a disproportionate share hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In subsequent years, qualifications effective July 1 of any particular year are based on each hospital's fiscal year ending in the preceding calendar year. The patient days, costs, revenues, or charges related to nursing facility services, swing-bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if:

- (1) The hospital has at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric services as of

December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age; and

- (2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state; or
  - (3) The hospital's low income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:
    - (A) The ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and
    - (B) The ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments divided by the hospital's total inpatient charges; or
  - (4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; or
  - (5) The hospital, in ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50 percent of the total Medicaid patient days provided by all hospitals in the State; or
  - (6) It is a Psychiatric hospital operated by the North Carolina Department of Human Resources, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) or UNC Hospitals operated by the University of North Carolina.
- (b) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments:
- (c) An additional one time payment for the 12-month period ending September 30, 1995, in an amount determined by the Director of the Division of Medical Assistance, may be paid to the Public hospitals that are the primary affiliated teaching hospitals for the University of North Carolina Medical Schools less payments made under authority of Paragraph (d) of this Rule. The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to this payment require that when this payment is added to other Disproportionate Share Hospital payments, the additional disproportionate share payment will not exceed 100 percent of the total cost of providing inpatient and outpatient services to Medicaid and uninsured patients less all payments received for services provided to Medicaid and uninsured patients.



The total of all payments may not exceed the limits on DSH funding as set for the State by HCFA.

(d) Effective July 1, 1994, hospitals eligible under Subparagraph (a)(6) of this Rule shall be eligible for disproportionate share payments, in addition to other payments made under the North Carolina Medicaid Hospital reimbursement methodology, from a disproportionate share pool under the circumstances specified in Subparagraphs (1), (2) and (3) of this Paragraph.

(1) An eligible hospital will receive a monthly disproportionate share payment based on the monthly bed days of services to low income persons of each hospital divided by the total monthly bed days of services to low income persons of all hospitals items allocated funds.

(2) This payment shall be in addition to the disproportionate share payments made in accordance with Subparagraphs (a)(1) through (5) of this Rule. However, DMH/DD/SAS operated hospitals are not required to qualify under the requirements of Subparagraphs (a)(1) through (5) of this Rule.

(3) The amount of allocated funds shall be determined by the Director of the Division of Medical Assistance, but not to exceed the quarterly grant award of funds (plus appropriate non-federal match) earmarked for disproportionate share hospital payments less payments made under Subparagraphs (a)(1) through (5) divided by three. In Subparagraph (d)(1) of this Rule, bed days of services to low income persons is defined as the number of bed days provided to individuals that have been determined by the hospital as patients that do not possess the financial resources to pay portions or all charges associated with care provided.

Low income persons include those persons that have been determined eligible for medical assistance. The count of bed days used to determine payment is based upon the month immediately prior to the month that payments are made.

Disproportionate share payments to hospitals are limited in accordance with The Social Security Act as amended, Title XIX section 1923 (g), limit on amount of payment to hospitals.

(e) Subject to the availability of funds, hospitals that: qualify as disproportionate share hospitals under Subparagraphs (a)(1) through (5) of this Rule for the fiscal years ended September 30, 1995 and September 30, 1996; operate Medicare approved graduate medical education programs for the fiscal years ended September 30, 1995 and September 30, 1996; and incur for the 12-month period ending September 30, 1996 unreimbursed costs (calculated without regard to payments under either this Paragraph or Paragraph (f) of this Rule) for providing inpatient and outpatient services to uninsured patients in an amount in

excess of two million five hundred thousand dollars (\$2,500,000) shall be eligible for disproportionate share payments for such services from a disproportionate share pool under the circumstances specified in Subparagraphs (1) through (7) of this Paragraph.

(1) Qualification for the 12 month period ending September 30, 1996 shall be based on cost report data and uninsured patient data certified to the Division by hospitals on or before September 23, 1996 for fiscal years ending in 1995, in connection with the disproportionate share hospital application process. Qualification for subsequent 12 month periods ending September 30 of each year shall be based on cost report data and uninsured patient data certified to the Division by hospitals on or before September 1 of each subsequent year, for the fiscal year ending in the preceding calendar year.

(2) Any payments made pursuant to this Paragraph shall be calculated and paid no less frequently than annually, and prior to the calculation and payment of any disproportionate share payments pursuant to Paragraph (f) of this Rule.

(3) For the 12 month period ending September 30, 1996 a payment shall be made to each qualified hospital in an amount determined by the Director of the Division of Medical Assistance based on a percentage (not to exceed a maximum of 23 percent) of the unreimbursed costs incurred by each qualified hospital for inpatient and outpatient services provided to uninsured patients.

(4) In subsequent 12 month periods ending September 30th of each year, the percentage payment shall be ascertained and established by the Division by ascertaining funds available for payments pursuant to this Paragraph divided by the total unreimbursed costs of all hospitals that qualify for payments under this Paragraph for providing inpatient and outpatient services to uninsured patients.

(5) The payment limits of the Social Security Act, Title XIX, section 1923(g)(1) applied to the payments authorized by this Paragraph require that when this payment is added to other disproportionate share hospital payments, the total disproportionate share payments shall not exceed 100 percent of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients. The total of all disproportionate share hospital payments shall not exceed the limits on disproportionate share hospital funding as established for this State by HCFA.

(6) To ensure that payments pursuant to Paragraph (e) do not exceed the State aggregate upper limits to such payments established by applicable federal law and regulation (42 C.F.R. 447.272), such payments shall be cost settled within 12 months of receipt of

the completed cost report covering the period for which such payments are made. If any hospital receives payments, pursuant to this Subparagraph in excess of the percentage established by the Director under Subparagraph (d)(3) of this Rule, ascertained without regard to other disproportionate share hospital payments that may have been received for services during the 12-month period ending September 30, 1996, such excess payments shall promptly be refunded to the Division. No additional payment shall be made to qualified hospitals in connection with the cost settlement.

- (7) The payments authorized by Subparagraph (6) shall be effective in accordance with G.S. 108A-55(c).

(f) An additional one-time disproportionate share hospital payment during the 12-month period ending September 30, 1996 (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to qualified public hospitals. For purposes of this Paragraph, a qualified public hospital is a hospital that qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (5) of this Rule; does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule; was owned or operated by a State (or by an instrumentality or a unit of government within a State) throughout the 12-month period ending September 30, 1996; verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services on or before September 23, 1996; files with the Division on or before September 23, 1996 by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients during the fiscal year ending in 1995; and submits to the Division on or before September 23, 1996 by use of a form prescribed by the Division a certificate of public expenditures.

- (1) The payment to qualified public hospitals pursuant to this Paragraph for the 12-month period ending September 30, 1996 shall be based on and shall not exceed the unreimbursed charges certified to the Division by each such hospital by use of a form prescribed by the Division for inpatient and outpatient services provided to uninsured patients for the fiscal year ending in 1995, to be converted by the Division to unreimbursed cost by multiplying unreimbursed charges times the cost-to-charge ratio established by the Division for each hospital for the fiscal year ending in 1995. Payments authorized by this Paragraph shall be made no less frequently than annually.
- (2) Any payments pursuant to this Paragraph shall be ascertained and paid after any disproportionate share hospital payments that may have been or may be paid by the Division pursuant to Paragraph (d) of this Rule.

- (3) The payment limits of the Social Security Act, Title XIX, Section 1923 (g)(1) applied to this payment require that when this payment is added to other disproportionate share hospital payments, the total disproportionate share hospital payments will not exceed 100 percent of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division may not exceed the limits on disproportionate share hospital funding as established for this State by HCFA for the fiscal year in which such payments are made.
- (4) To ensure that estimated payments pursuant to Paragraph (f) do not exceed the State aggregate upper limits to such payments established by applicable federal law and regulation (42 C.F.R. 447.272), such payments shall be cost settled within 12 months of receipt of the completed cost report covering the 12 month period for which such payments are made. No additional payments shall be made in connection with the cost settlement.
- (5) The payments authorized by Paragraph (f) of this Rule shall be effective in accordance with G.S. 108A-55(c).

(g) Effective with dates of payment beginning October 31, 1996, hospitals that provide services to clients of State Agencies are considered to be a Disproportionate Share Hospital (DSH) when the following conditions are met:

- (1) The hospital has a Medicaid inpatient utilization rate not less than one percent and has met the requirements of Subparagraph (a)(1) of this Rule; and
- (2) The State Agency has entered into a Memorandum of Understanding (MOU) with the Division of Medical Assistance (Division); and
- (3) The inpatient and outpatient services are authorized by the State Agency for which the uninsured client meets the program requirements.
  - (A) For purposes of this Paragraph, uninsured patients are those clients of the State Agency that have no third parties responsible for any hospital services authorized by the State Agency.
  - (B) DSH payments are paid for services to qualified uninsured clients on the following basis:
    - (i) For inpatient services the amount of the DSH payment is determined by the State Agency in accordance with the applicable Medicaid inpatient payment methodology as stated in Rule .0211 of this Section.
    - (ii) For outpatient services the amount of the DSH payment is determined by the



State Agency in accordance with the applicable Medicaid outpatient payment methodology as stated in Section 24 of Chapter 18 of the 1996 General Assembly of North Carolina.

- (iii) No federal funds are utilized as the non-federal share of authorized payments unless the federal funding is specifically authorized by the federal funding agency as eligible for use as the non-federal share of payments.

- (C) Based upon this subsection DSH payments as submitted by the State Agency are to be paid monthly in an amount to be reviewed and approved by the Division of Medical Assistance. The total of all payments may not exceed the limits on Disproportionate Share Hospital funding as set forth for the state by HCFA.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

## TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0315. Notice of Rule-making Proceedings was published in the Register on March 14, 1997.

**Proposed Effective Date:** August 1, 1998

**A Public Hearing** will be conducted at 7:00 p.m. on October 21, 1997 at the Archdale Building, Groundfloor Hearing Room, 512 North Salisbury Street, Raleigh, NC.

**Reason for Proposed Action:** The NC Department of Environment, Health, and Natural Resources on behalf of the Environmental Management Commission (EMC) will conduct a public hearing in order to receive public comments on the proposed revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. These rule-making proceedings are being held in accordance with G.S. 143-214.1, 143-215.1, and 143-215.3(a)(1).

Falls Lake is the primary drinking water supply source for the City of Raleigh. The water supply is classified as WS-IV and encompasses parts of Durham, Franklin, Granville, and Wake Counties. In addition, the municipalities of Creedmoor, Durham, Raleigh, Butner, and Wake Forest have jurisdiction within the designated water supply area. Since this water supply is a WS-IV with an intake located in a reservoir, the Critical Area (CA) and Protected Area (PA) boundaries are based on the normal pool elevation of the

reservoir. The minimum CA size is defined in the Water Supply Watershed Protection Rules as ½ mile and draining to the reservoir, as measured from the normal pool elevation. The rules define the PA as five miles and draining to the normal pool elevation of the reservoir. Any changes to the normal pool elevation change the CA and PA boundaries which will in turn affect the amount of land subject to the rules.

Falls Lake was constructed as a multi-purpose reservoir by the U.S. Army Corps of Engineers in 1981, and started filling in 1983. One of the purposes was to provide water to the City of Raleigh with a guaranteed volume. However, due to a surveying error the actual storage capacity of the reservoir fell short of the contractual volume. The normal pool elevation was at 250.1 feet msl (mean sea level) at the completion of the reservoir. The United States Congress approved the Corps raising the dam approximately twelve inches in order to provide the agreed upon storage capacity for the City, and address water quality, flood control and sediment issues. Construction to raise the dam was completed in the fall of 1995. In changing the dam height, the normal pool elevation has risen to 251.5 feet msl. The result is a change in the Critical and Protected Areas surrounding the lake. Since the Schedule of Classifications for the Neuse River Basin (15A NCAC 2B .0315) references these areas, it is necessary to proceed to rulemaking in order to revise the outer boundaries of the CA and PA. The total affected area will increase from 173,156 acres to 187,741 acres (includes lake surface area), which is a 6 percent increase.

Each of the affected local governments would be required to modify their water supply watershed protection ordinance and associated maps within 180 days following adoption and notification from the Environmental Management Commission of the change.

**Comment Procedures:** The purpose of this announcement is to encourage those interested in this proposal to provide comments. You may either attend the public hearing and make relevant verbal comments or submit written comments, data or other relevant information by November 21, 1997. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. We encourage you to submit written comments as well.

The EMC is very interested in all comments pertaining to the proposed reclassification. It is very important that all interested and potentially affected persons or parties make their views known to the EMC whether in favor of or opposed to any and all provisions of the proposed reclassification. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in the North Carolina Register unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see 150B-21.2(g)). All interested and potentially affected persons are strongly encouraged to read the entire announcement and supporting information, and make appropriate comments on

*the proposal presented. The proposed effective date for the final rules pursuant to this hearing process is August 1, 1998. Written comments may be submitted by November 21, 1997 to:*

*Liz Kovaschitz  
DEHNR/Division of Water Quality  
PO Box 29535  
Raleigh, NC 27626-0535  
(919) 733-5083, extension 572*

*In the case of inclement weather on the day the public hearing is scheduled, please contact the above telephone number for a recorded message on any changes to the location, day or time of the hearing.*

**Fiscal Note:** *This Rule does affect the expenditures of local government funds. This Rule does not affect the expenditures of state government funds. This Rule does not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.*

## **CHAPTER 2 - ENVIRONMENTAL MANAGEMENT**

### **SUBCHAPTER 2B - SURFACE WATER AND WETLAND STANDARDS**

#### **SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS**

##### **.0315 NEUSE RIVER BASIN**

(a) The schedule may be inspected at the following places:

- (1) Clerk of Court:  
Beaufort County  
Carteret County  
Craven County  
Durham County  
Franklin County  
Granville County  
Greene County  
Johnston County  
Jones County  
Lenoir County  
Nash County  
Orange County  
Pamlico County  
Person County  
Pitt County  
Wake County  
Wayne County  
Wilson County
- (2) North Carolina Department of Environment,  
Health, and Natural Resources:
  - (A) Raleigh Regional Office  
3800 Barrett Drive  
Raleigh, North Carolina
  - (B) Washington Regional Office  
1424 Carolina Avenue  
Washington, North Carolina

(C) Wilmington Regional Office  
127 Cardinal Drive  
Wilmington, North Carolina.

(b) The Neuse River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) September 14, 1980;
- (4) August 9, 1981;
- (5) January 1, 1982;
- (6) April 1, 1982;
- (7) December 1, 1983;
- (8) January 1, 1985;
- (9) August 1, 1985;
- (10) February 1, 1986;
- (11) May 1, 1988;
- (12) July 1, 1988;
- (13) October 1, 1988;
- (14) January 1, 1990;
- (15) August 1, 1990;
- (16) December 1, 1990;
- (17) July 1, 1991;
- (18) August 3, 1992;
- (19) April 1, 1994;
- (20) July 1, 1996;
- (21) September 1, 1996;
- (22) April 1, ~~1997~~ 1997;
- (23) August 1, 1998.

(c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:

- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
- (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
- (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.

(d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:

- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III & B.
- (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:

- (1) Neuse-Southeast Pamlico Sound ORW Area which



includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.

- (2) Core Sound [Index No. 27-149] from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River [Index No. 27-105] from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(h) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.

- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV&B NSW.

- (3) Silver Lake [Index No. 27-43-5] was reclassified from Class WS-III NSW to Class WS-III&B NSW.

(j) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.

(k) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

(l) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].

(m) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries is the result of the Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

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Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10F .0311, .0333, and .0360. Notice of Rule-making Proceedings was published in the Register on July 1, 1997.

**Proposed Effective Date:** July 1, 1998

**A Public Hearing** will be conducted at 10:00 a.m. on October 16, 1997 at the Archdale Building, Wildlife Conference Room, 512 N. Salisbury Street, Raleigh, NC 27604.

**Reason for Proposed Action:** To regulate boat speed in congested areas.



**Comment Procedures:** *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from October 1, 1997 through October 31, 1997. Such written comments must be delivered or mailed to NC Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

**Fiscal Note:** *These Rules do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.*

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10F -MOTORBOATS AND WATER SAFETY

#### SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

##### .0311 GRANVILLE: VANCE AND WARREN COUNTIES

(a) Definitions. In addition to the definitions set forth in Paragraph (b) of Rule .0301 of this Section, the following definitions shall apply in this Rule:

- (1) Corps. Corps of Engineers, United States Army;
- (2) Reservoir. John H. Kerr Reservoir in Granville, Vance and Warren Counties.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any concrete boat launching ramp located on the reservoir in said counties.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a designated mooring area established by or with the approval of the Corps on the waters of the reservoir in said counties.

(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any designated swimming area established by or with the approval of the Corps on the waters of the reservoir in said counties.

(e) Speed Limit at Kimball Point. No person shall operate a vessel at greater than no-wake speed within 50 yards of the shoreline in the northernmost cove of the Kimball Point Recreation Area in the reservoir, such recreation area being at the western end of SR 1204 in Warren County.

(f) Speed Limit at Lower Mill Creek. No person shall operate a vessel at greater than no-wake speed beginning at a point on the eastern side of Lower Mill Creek where it intersects the North Carolina - Virginia state line, running across the creek with said state line and then running in a southerly direction on both the east and west sides of the creek to the head waters and including all waters of the creek south of the state line.

(g) Speed Limit at Kerr Lake Methodist Campground. No

person shall operate a vessel at greater than no-wake speed beginning 50 yards north and ending 50 yards east of the Kerr Lake Methodist Campground.

~~(g)~~ (h) Placement and Maintenance of Markers. The Corps is designated a suitable agency for placement and maintenance of markers implementing this Rule. The perimeters of designated swimming areas must be marked with float lines which, in conjunction with the shoreline, form completely enclosed areas. In addition, supplementary standards as set forth in Rule .0301(g)(2) to (7) and (9) of this Section shall apply.

Authority G.S. 75A-3; 75A-15.

##### .0333 MECKLENBURG AND GASTON COUNTIES

(a) Regulated Areas. This Rule applies only on that portion of the waters of Lake Wylie which lies within the boundaries of Mecklenburg and Gaston Counties and to the restricted zones indicated by Paragraphs (b), (c), (d), (e), (f), ~~(g)~~ and ~~th~~ (g), (h), (i), and (j) of this Rule on such waters.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat-launching ramp in Mecklenburg County.

(c) Speed Limit Near Piers. No person shall operate a vessel at greater than no-wake speed limit within 50 yards of any pier operated by Mecklenburg County for public use.

(d) Speed Limit at McDowell Park. No person shall operate a vessel at greater than no-wake speed on the waters of the coves adjoining McDowell Park and the Southwest Nature Preserve in Mecklenburg County, including the entrances to the coves on either side of Copperhead Island.

(e) Speed Limit at Gaston County Wildlife Club Cove. No person shall operate a vessel at greater than no-wake speed on the waters of the cove at the Gaston County Wildlife Club on South Point Peninsula in Gaston County.

(f) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established in Mecklenburg County with the approval of the Executive Director, or his representative.

(g) Restricted Swimming Areas. No person operating a vessel shall permit it to enter any marked swimming area established in Mecklenburg County with the approval of the Executive Director, or his representative.

(h) Speed Limit Near Boating Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any boat launching ramp, dock, pier, marina, boat storage structure or boat service area on that part of Lake Wylie, including the South Fork River arm, which is located in Gaston County.

(i) No person shall operate a vessel at greater than no-wake speed within the area 250 feet to the north and 150 feet to the south of the Buster Boyd Bridge on Lake Wylie.

(j) Speed Limit Near Highway 27 Bridge. No person shall operate a vessel at greater than no-wake speed beginning 50 yards north and extending 50 yards south of the outer two

overpasses near the Highway 27 Bridge at the Mount Holly Access Area on Lake Wylie.

(j) (k) Placement and Maintenance of Markers. The Boards of Commissioners of Mecklenburg County and Gaston County are designated suitable agencies for placement and maintenance of markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers. With regard to marking the restricted zones indicated in this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

Authority G.S. 75A-3; 75A-15.

**.0360 GRAHAM COUNTY**

(a) Regulated Area. This rule applies to the waters and portions of waters described as follows:

- (1) Lake Santeetlah Boat Dock on Lake Santeetlah in Graham County;
- (2) Entrance of Fontana Boat Dock in Fontana Lake in Graham County;
- (3) Thomas Boat Dock on Fontana Lake in Graham County;
- (4) Crisp's Boat Dock, Panther Creek on Fontana Lake in Graham County.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within 50 yards of the regulated areas as described in Paragraph (a) of this Rule.

(c) Cheoah Point Swimming Area, Lake Santeetlah - No person shall operate a vessel within the Cheoah Point Swimming Area which begins at the head of Cheoah Point Cove and extends to the mouth of the Cove as designated by marker buoys and float lines.

(e) (d) Placement and Maintenance of Markers. The Graham County Board of Commissioners is designated as a suitable agency for the placement and maintenance of markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend rules cited as 15A NCAC 18A .2301 - .2307 and adopt .2308 - .2310. Notice of Rule-making Proceedings was published in the Register on August 1, 1997.

**Proposed Effective Date:** July 1, 1998

**A Public Hearing** will be conducted at 1:00 p.m. on October 29, 1997 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, NC.

**Reason for Proposed Action:** To specify the types of authorization possible to be granted, the requirements for authorization, the processes for authorization, the

requirements for training, the requirements for individuals who were once an agent and are desiring to be an agent again, the requirements to contract with other local health departments, the continuing education requirements, the reasons for denial, suspension, or revocation, reinstatement, and appeals procedures.

**Comment Procedures:** Any person requiring information may contact Mr. Malcolm Blalock, PO Box 29596, Raleigh, NC 27626-0596, telephone (919) 715-0929, or e-mail at [Malcolm\\_Blalock@mail.ehnr.state.nc.us](mailto:Malcolm_Blalock@mail.ehnr.state.nc.us). Comments will be received through October 31, 1997.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

**CHAPTER 18 -ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A - SANITATION**

**SECTION .2300 - DELEGATION OF AUTHORITY  
TO ENFORCE COMMISSION FOR HEALTH  
SERVICES' SANITATION RULES**

**.2301 SCOPE OF DELEGATED AUTHORITY**

No person shall act as an authorized agent of the state in enforcing the rules of the Commission for Health Services who is not a current employee of a local health department, registered with the North Carolina State Board of Sanitarian Examiners as a Registered Sanitarian or Sanitarian Intern and authorized pursuant to these Rules. There shall be ~~three~~ seven areas of authorization to enforce the rules of the Commission for Health Services' Services found in Subchapter 18A as follows: sanitation rules:

- (1) authority to enforce food, lodging, and institutional sanitation, migrant housing, and public swimming pool rules; Food, Lodging, and Institution Sanitation including the following:
  - (a) .1000 Sanitation of Summer Camps.
  - (b) .1300 Sanitation of Hospitals; Nursing and Rest Homes; Sanitariums, Sanitoriums; Educational and other Institutions.
  - (c) .1500 Sanitation of Local Confinement Facilities.
  - (d) .1600 Sanitation of Residential Care Facilities.
  - (e) .1800 Sanitation of Lodging Establishments.
  - (f) .2100 Rules Governing the Sanitation & Safety of Migrant Housing.
  - (g) .2200 Sanitation of Bed and Breakfast Homes.
  - (h) .2400 Sanitation of Public, Private, and Religious Schools.
  - (i) .2600 Sanitation of Restaurants and Other Foodhandling Establishments.



- (j) .2700 Sanitation of Meat Markets, and
- (k) .3000 Bed and Breakfast Inns.
- (2) authority to enforce sewage, migrant housing, and public swimming pool rules, and On-Site Wastewater, including the following:
  - (a) .1900 Sewage Treatment and Disposal Systems,
  - (b) .1603 and .1606, .1611(a) and (b) and .1613 Sanitation of Residential Care Facilities (Family Foster Homes), and
  - (c) .2100 Rules Governing the Sanitation and Safety of Migrant Housing.
- (3) authority to enforce both (1) and (2) of this Rule. .2800 Sanitation of Child Day Care Facilities.
- (4) .3100 Lead Poisoning Prevention in Children Program.
- (5) .2500 Public Swimming Pools.
- (6) .3200 Tattooing.
- (7) .1603, .1606, .1611(a) and (b), .1613 Sanitation of Residential Care Facilities (Family Foster Homes) and .2100 Rules Governing the Sanitation and Safety of Migrant Housing.

Authority G.S. 130A-4(b); 130A-5(3).

## **.2302 ELIGIBILITY FOR DELEGATION OF AUTHORITY**

In order for an individual to be eligible for delegation of Division of Environmental Health authority, the individual must meet the following criteria:

- (a) The applicant shall successfully complete a centralized training course approved by the Division.
- (b) The applicant shall successfully complete all required preliminary activities and field practice and review.
- (c) When the supervisor determines that the applicant has progressed sufficiently to work independently, the health director may request the applicant be evaluated for authorization. Documentation of the satisfactory condition of all preliminary activities and field practice, including any inspection or evaluation forms completed by the applicant and comments of the supervisor shall be forwarded to the regional specialist.
- (d) If, upon reviewing the file, the regional specialist finds that the applicant needs additional field practice, the evaluation for authorization may be postponed until that practice has been completed.
- (e) Upon satisfactory completion of the requirements in Paragraphs (a)-(d) of this Rule, the regional specialist shall coordinate the administration of a written test which the applicant must pass by a score of 70 percent or more. The test may be repeated if necessary.
- (f) An applicant only requesting authorization for 15A NCAC 18A .3100 Lead Poisoning Prevention in Children Program, in lieu of the requirements set out in Paragraphs (a)-(e) of this Rule, shall be required to take and successfully complete the North Carolina State of Practice course entitled "Lead Investigation and Abatement" and shall pass the

written test provided by that course.

(g) After the applicant has successfully completed the written test, the regional specialist shall conduct a field evaluation of the applicant's knowledge, skills, and ability to enforce the specific laws and rules of the Commission. Following the field evaluation, the regional specialist shall make a recommendation to the Director of the Division of Environmental Health.

- (1) employment by a local health department;
- (2) satisfactory completion of the orientation /initial field training at one of the Division of Environmental Health's recognized orientation/initial field training centers;
- (3) registration by the State Board of Sanitarian Examiners as a sanitarian intern or sanitarian, and
- (4) completion of an organized orientation for new employees by the health department which employs the individual.

Authority G.S. 130A-4(b); 130A-5(3).

## **.2303 DELEGATION OF AUTHORITY**

(a) Upon a request from the local health department and upon a determination that the individual meets the requirements of Rule .2302 of this Section, the district sanitarian shall identify the responsibilities which have been assigned to the individual, determine the appropriate type of authorization, and work individually with the person for at least three days. During this period of evaluation, the district sanitarian will examine the individual's:

- (1) knowledge of appropriate technical material, rules, and laws;
- (2) ability to apply technical material, rules, and laws appropriately; and
- (3) ability to work effectively with the public.

(b) Upon a determination that the criteria in Paragraph (a) have been met and that none of the reasons for denial listed in Rule .2305 of this Section exist, the Environmental Health Services Section Chief shall issue delegation of authority to enforce a specific area of the rules:

Upon determination that the criteria in Rule .2302 of this Section have been met and none of the reasons for denial listed in Rule .2308 of this Section exist, and upon a review of the recommendation of the regional specialist, the Director, Division of Environmental Health, shall rule on the request for authorization. An Identification Card shall be issued by the Division to each person authorized to enforce the rules of the Commission. The card shall be carried by the agent at all times when on duty. The card is the property of the Division and shall be returned to the Division upon separation of employment, suspension, or revocation of authorization or failure to maintain registration with the N.C. Board of Sanitarian Examiners.

Authority G.S. 130A-4(b); 130A-5(3).

## **.2304 SUBSEQUENT AUTHORIZATIONS**

~~The district sanitarian has authority to evaluate the performance of individuals who have been delegated authority to enforce Commission for Health Services' sanitation rules and to make recommendations to the Environmental Health Services Section Chief.~~

The local health director shall request authorization for an individual who has been previously authorized.

- (1) An individual who has not been authorized in an area for a period of up to three years shall be required to receive training as determined by the regional specialist after a field evaluation of the agent's knowledge, skills, and ability to enforce the rules.
- (2) An individual who has not been authorized in an area for a period of three years to five years shall be required to meet all of the requirements which apply to new applicants, except that the individual shall not be required to attend the entire centralized training course, but shall, instead, attend only the portions of the centralized training course which are directly applicable to the area of authorization requested.
- (3) An individual who has not been authorized for a period longer than five years shall be required to meet all requirements which apply to new applicants.

*Authority G.S. 130A-4(b); 130A-5(3).*

#### **.2305 CONCURRENT AUTHORIZATION IN MULTIPLE COUNTIES**

~~(a) The Environmental Health Services Section Chief may deny, suspend, or revoke the delegation of authority for any of the following:~~

- ~~(1) failure to satisfy the requirements for delegation of authority in Rules .2302 and .2303 of this Section;~~
- ~~(2) fraud, deceit, or perjury in obtaining delegation of authority;~~
- ~~(3) addiction to narcotics;~~
- ~~(4) drunkenness on duty;~~
- ~~(5) defrauding the public or attempting to do so;~~
- ~~(6) incompetency, dishonesty, or unprofessionalism in performing delegated duties;~~
- ~~(7) inexcusable neglect of duty;~~
- ~~(8) failure to properly interpret and enforce laws, rules, and policies;~~
- ~~(9) the delegation of authority is no longer necessary due to a change in duties of the individual; or~~
- ~~(10) failure to maintain registration by the State Board of Sanitarian Examiners and employment by a local health department.~~

~~(b) Prior to suspension or revocation of delegation of authority, the Environmental Health Services Section Chief may place the individual on probation for a period not to exceed two years. If the individual does not show satisfactory improvement in the areas given as reasons for probation within the stated time period, the Environmental~~

~~Health Services Section Chief shall suspend or revoke the delegation of authority.~~

The Division may allow an agent who is authorized in a local health department to contract with another local health department to provide services to that county. When a local health department contracts for such services, the contracting department shall provide a statement to the Department on progress made to employ an individual who may be considered for authorization.

- (1) A contract shall be created between the contracting local health department and the agent (contractor) to include at least the following provisions:

- (a) Names and addresses of each party.
- (b) Scope of work to be performed.
- (c) Require the original public records to remain in the local health department in which the work is performed. The public records shall be left at the local health department or with an individual employed by the local health department who shall be responsible for delivering said records to the local health department within two business days of the service provided.
- (d) Designate the party responsible for maintaining public records created by the agent.
- (e) Require the agent to be available for consultation to the public being served during usual business hours.
- (f) Require the agent to be available for any hearing or other legal proceeding which may ensue from activities conducted by the agent.

- (2) The agent shall maintain a list of each activity and the date performed for review in accordance with Items (3) and (4) of this Rule.

- (3) Each public record created by the contracting agent shall be reviewed, dated, and initialed by an authorized agent of a local health department or the regional specialist as provided by Item (4) of this Rule. In addition, at least 10 percent of the activities performed by the agent shall be reviewed on-site in the field by an authorized agent employed by the contracting local health department. The review shall be conducted each month and shall cover the previous month's activities conducted by the contracting agent.

- (4) If the contracting local health department has no authorized employee, the Division shall conduct a review of each public record created by the contracting agent. In addition, at least 10 percent of the activities performed by the agent shall be reviewed on-site in the field by the Division. The review shall be conducted each month and shall cover the previous month's activities conducted by the agent.



Authority G.S. 130A-4(b); 130A-5(3).

## **.2306 CONTINUING EDUCATION**

~~If an individual's authorization has been suspended, the authorization will be reinstated upon determination that the reasons for suspension no longer exist. If an individual's authorization has been revoked, an individual who has not had a history of fraud or deceit in the past five years may apply for re-authorization after six months from the date of revocation by satisfying the requirements of Rules .2302 and .2303 of this Section.~~

(a) The requirements in this Rule shall apply to all agents who are authorized pursuant to G.S. 130A-4(b) to enforce rules of the Commission, effective on January 1 of the year following the effective date of this Rule. Each agent shall receive the following contact hours of approved continuing education for each authorization held:

- (1) Food, Lodging, and Institutional Sanitation, including Migrant Housing and Family Foster Homes rules, at least 14 hours of continuing education over a three year period.
- (2) On-Site Wastewater rules, including Migrant Housing and Family Foster Homes rules, at least 12 hours of continuing education over a three year period.
- (3) Child Day Care rules, at least eight hours of continuing education over a three year period.
- (4) Lead Poisoning Prevention in Children rules, at least six hours of continuing education over a three year period.
- (5) Public Swimming Pools rules, at least three hours of continuing education over a three year period.
- (6) Tattooing rules, at least 2 hours of continuing education over a three year period.

(b) An agent who attends the North Carolina State of Practice Committee's workshops entitled "Environmental Health Law" or "Getting the Message Across" shall be given credit for meeting 50 percent of the requirements cited in Subparagraphs (a)(1) - (6) of this Rule, not to exceed 100 percent of the total credit given for attendance at the workshop. An agent may receive credit for viewing videotapes of workshops which have been professionally produced or created by the Department or for completing approved home-study courses. However, a maximum of 50 percent of the required hours of continuing education may be obtained by videotapes or home-study courses.

(c) An agent who is providing the training shall be given credit towards the continuing education requirements at a rate of two hours of credit for every hour of presentation for the initial presentation. Subsequent presentations of the same topic shall be given credit at a rate of one hour's credit for each hour of presentation.

- (1) An individual or organization desiring approval of a course or program shall apply for such approval by submitting to the Division of Environmental Health a copy of the course agenda, including a description of the topics to be discussed, the time

frame of each presentation and the identity and qualifications of each presenter.

- (2) An applicant denied approval of a program may request reconsideration of such a decision by submitting a letter to the Director, Division of Environmental Health within 15 days of receipt of the notice of disapproval. The decision of the Director is final.
- (3) Educational programs offered by local health departments may be approved when the regional environmental health specialist is actively involved with the planning of the program and is a participant in the program.
- (4) The individual or organization conducting an approved course or program shall submit to the division a list of attendees, including the number of hours each attendee was present. The following information shall be included for each attendee:
  - (a) Name.
  - (b) Employing Agency.
  - (c) Registered Sanitarian Number.
  - (d) Number of hours of attendance.
- (5) The Division shall be responsible for maintaining records for each authorized individual's attendance at approved courses or programs. The division shall provide a report to each authorized individual at least annually. The report shall include the hours needed, the hours credit received and the hours necessary to meet the requirements of the rule for each authorization held.
- (6) The Division shall notify an authorized agent who has not met the requirements of these Rules that the agent's authorization will be suspended in 60 days unless the agent shows that all continuing education requirements have been met. If the authorized agent submits documentation of compliance with this Rule to the division within 60 days of the date of the notice, the Division shall review the documentation and determine whether the authorized agent has demonstrated compliance with this Rule. If the division determines that the authorized agent has not demonstrated compliance with the Rule within 60 days of the notice, the agent's authorization shall be suspended until compliance is shown.

Authority G.S. 130A-4(b); 130A-5(3).

## **.2307 EVALUATION**

~~Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B.~~

The regional specialist may, at any time, evaluate the performance of an authorized agent and recommend that the Director, Division of Environmental Health, take corrective action.



Authority G.S. 130A-4(b); 130A-5(3).

**.2308 DENIAL; SUSPENSION AND REVOCATION**

(a) The Director, Division of Environmental Health, may deny, suspend, or revoke the authorization to act as an agent of the State for any of the following:

- (1) failure to satisfy the requirements for authorization in Rules .2302 and .2303 of this Section;
- (2) fraud, deceit, dishonesty, or perjury in obtaining authorization or in performing authorized duties;
- (3) addiction to controlled substances;
- (4) drug or alcohol induced intoxication on duty;
- (5) defrauding the public or attempting to do so;
- (6) incompetency or unprofessionalism in performing authorized duties;
- (7) neglect of duty; or
- (8) failure to properly interpret and enforce laws, rules, and policies.

(b) The Director, Division of Environmental Health may place an individual on conditional status for a period not to exceed six months if the individual's failure to properly enforce laws, rules and policies may be corrected with additional education and oversight. The Director may suspend or revoke the authorization anytime during the conditional period if satisfactory progress is not made and the Director shall suspend or revoke the authorization after the conditional period if the individual does not demonstrate the necessary knowledge, skills and ability to warrant an unconditional authorization.

Authority G.S. 130A-4(b); 130A-5(3).

**.2309 RE-AUTHORIZATION**

If an individual's authorization has been suspended, the authorization will be reinstated upon determination that the reasons for suspension no longer exist. If an agent's authorization has been revoked for failure to comply with the requirements found in Rule .2308(2) or (5) of this Section, the agent may apply for reinstatement five years after the revocation becomes effective. If an individual's authorization has been revoked for reasons other than those found in Rule .2308(2) or (5) of this Section, the agent may reapply for authorization after six months from the date the revocation becomes effective by satisfying the requirements of Rules .2302 and .2303 of this Section. The Department may refuse to reauthorize an individual if it is not satisfied that the reasons for revocation are unlikely to reoccur.

Authority G.S. 130A-4(b); 130A-5(3).

**.2310 APPEALS PROCEDURES**

Appeals concerning denials, suspensions and revocations of authorization under these Rules shall be made in accordance with G.S. 150B. An individual whose authorization has been suspended or revoked and who timely requests an appeal may continue to work as an authorized agent until a final agency decision is made pursuant to G.S. 150B-36; however, all

inspection forms and permits completed by the agent during that period must be countersigned by another authorized agent who concurs with the findings and conclusions reflected on the inspection forms and permits.

Authority G.S. 130A-4(b); 130A-5(3).

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend rule cited as 15A NCAC 24A .0202. Notice of Rule-making Proceedings was published in the Register on July 1, 1997.

**Proposed Effective Date:** August 1, 1998

**A Public Hearing** will be conducted at 1:00 p.m. on October 29, 1997 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury St., Raleigh, NC.

**Reason for Proposed Action:** *The purpose of this rulemaking is to increase the income eligibility for inpatient care under the Sickie Cell Program to the same scale used for outpatient care. This action will establish consistent standard for determining eligibility for all levels of program funded care and will make inpatient care available to more low income clients.*

**Comment Procedures:** *Comments may be submitted in writing within 60 days after the date of publication of this issue of the North Carolina Register to Richard Moore, Purchase of Medical Care Services, Office of the Controller, DEHNR, PO Box 29602, Raleigh, NC 27626.*

**Fiscal Note:** *This Rule affects the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143. This Rule does not affect the expenditures or revenues of local government funds. This Rule does not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.*

**CHAPTER 24 - GENERAL PROCEDURES FOR  
PUBLIC HEALTH PROGRAMS**

**SUBCHAPTER 24A - PAYMENT PROGRAMS**

**SECTION .0200 - ELIGIBILITY DETERMINATIONS**

**.0202 DETERMINATION OF FINANCIAL  
ELIGIBILITY**

(a) A patient must meet the financial eligibility requirements of this Subchapter to be eligible for benefits provided by the payment programs. Financial eligibility shall be determined through application of income scales. The definition of annual net income in Rule .0203 of this Subchapter and the definitions of family in Rule .0204 of this

Subchapter shall be used in applying the income scales, except as provided in Paragraphs ~~(f)~~ (e) and ~~(g)~~ (f) of this Rule.

~~(b)~~ (b) A person shall be financially eligible for inpatient services under the Sickle Cell Program if the net family income is at or below the following scale: Family Size 1: \$4,200; Family Size 2: \$5,300; Family Size 3: \$6,400; Family Size 4: \$7,500; Family Size 5 and over: add \$500 per family member.

~~(c)~~ (b) A person shall be financially eligible for outpatient services under the Sickle Cell Program if the net family income is at or below the federal poverty level in effect on July 1 of each fiscal year.

~~(d)~~ (c) A person shall be financially eligible for the HIV Medications Program if the net family income is at or below 125 percent of the federal poverty level in effect on July 1 of each fiscal year.

~~(e)~~ (d) A person shall be financially eligible for the Kidney Program if the net family income is at or below the following scale: Family Size 1: \$6,400; Family Size 2: \$8,000; Family Size 3: \$9,600; Family Size 4: \$11,000; Family Size 5: \$12,000; Family Size 6 and over: add \$800 per family member.

~~(f)~~ (e) A person shall be financially eligible for the Cancer Program if gross family income is at or below 115 percent of the federal poverty level in effect on July 1 of each year.

~~(g)~~ (f) A child shall be financially eligible for Children's Special Health Services if the child is approved for Medicaid when applying or reapplying for program coverage, except for children eligible under Paragraph ~~(h)~~ (g) and ~~(i)~~ (h) of this Rule.

~~(h)~~ (g) A child approved for Children's Special Health Services post adoption coverage pursuant to 15A NCAC 21F .0800, shall be eligible for services under Children's Special Health Services if the child's net income is at or below the federal poverty level in effect on July 1 of each year.

~~(i)~~ (h) Non-Medicaid eligible children covered by CSHS prior to January 1, 1996 who reapply for program coverage during 1996 shall be granted one additional year of eligibility if their net family income is at or below the federal poverty level approved for program use at the time that they apply.

~~(j)~~ (i) A person shall be financially eligible for services under the Adult Cystic Fibrosis Program if the net family income is at or below the federal poverty level in effect on July 1 of each year.

~~(k)~~ (j) The financial eligibility requirements of this Subchapter shall not apply to:

- (1) Migrant Health Program;
- (2) School Health Fund financial eligibility determinations performed by a local health department which has chosen to use the financial eligibility standards of the Department of Public Instruction's free lunch program;
- (3) Prenatal outpatient services sponsored through local health department delivery funds, 15A NCAC 21C .0200; or through Perinatal Program high risk maternity clinic reimbursement funds, 15A NCAC

21C .0300;

- (4) Diagnostic assessments for infants up to 12 months of age with sickle cell syndrome.

~~(k)~~ (k) Except as provided in Paragraphs (l) and (m) of this Rule, once an individual is determined financially eligible for payment program benefits, the individual shall remain financially eligible for a period of one year after the date of application for financial eligibility unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period. If there is a change, financial eligibility for payment program benefits must be redetermined. Financial eligibility must be redetermined at least once a year.

~~(m)~~ (l) For purposes of the Kidney Program and HIV Medications Program, once an individual is determined to be financially eligible, if the application for financial eligibility was received by the Department in the fourth quarter of the fiscal year, the individual shall remain financially eligible for benefits until the end of the next fiscal year unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period.

~~(n)~~ (m) Children eligible for Children's Special Health Services Program benefits under Paragraph ~~(g)~~ (f) of this Rule are financially eligible for a service if they were Medicaid eligible on the date the requested service was initiated.

~~(o)~~ (n) If the most current financial eligibility form on file with the Department shows that the patient was financially eligible on the date an Authorization Request for payment for drugs was received, the Authorization Request may be approved so long as the Authorization Request is received less than 30 days prior to the expiration of financial eligibility and the authorized service does not extend more than 30 days after the expiration of financial eligibility.

*Authority G.S. 130A-4.2; 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.*

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS

### CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the Licensing Board for General Contractors intends to amend rule cited as 21 NCAC 12 .0202. Notice of Rule-making Proceedings was published in the Register on March 14, 1997.

**Proposed Effective Date:** August 1, 1998

**A Public Hearing** will be conducted at 10:00 a.m. on October 22, 1997 at the Engineering Graduate Research



*Center, 1010 Main Campus Drive, Centennial Campus - North Carolina State University, Raleigh, NC.*

**Reason for Proposed Action:** *To require all general contractors to be licensed under at least one of five classifications.*

**Comment Procedures:** *Persons wishing to present oral data, views or arguments on a proposed rule or rule change may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The Board's address is PO Box 17187, Raleigh, NC 27619. Written submission of comments or argument will be accepted at any time up to and until the close of the public hearing.*

**Fiscal Note:** *This Rule does not affect the expenditures or revenues of state or local government funds. This Rule does not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.*

## **SECTION .0200 - LICENSING REQUIREMENTS**

### **.0202 CLASSIFICATION**

(a) A general contractor **may must** be certified in one of five classifications. These classifications are:

- (1) **Building Contractor.** This classification covers all types of building construction activity including but not limited to: commercial, industrial, institutional, and all types of residential building construction; covers parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, curbs and gutters which are ancillary to the aforementioned types of construction; and covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), and S(Swimming Pools).
- (2) **Residential Contractor.** This classification covers all types of construction activity pertaining to the construction of residential units which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138; covers all site work, driveways and sidewalks ancillary to the aforementioned construction; and covers the work done as part of such residential units under the specialty classifications of S(Insulation), S(Masonry Construction), S(Roofing), and S(Swimming Pools).
- (3) **Highway Contractor.** This classification covers all types of highway construction activity including but not limited to: grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to the principal project, bridge

construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. Includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of signage, runway lighting and marking; and covers work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction) and S(Railroad Construction). If the contractor limits his activity to grading and does no other work described herein, upon proper qualification the classification of H(Grading and Excavating) may be granted.

- (4) **Public Utilities Contractor.** This classification includes those whose operations are the performance of construction work on the subclassifications of facilities set forth in G.S. 87-10(3). The Board may issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(3) for which the contractor qualifies. Within appropriate subclassification, a public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), and S(Swimming Pools).
- (5) **Specialty Contractor.** This classification shall embrace that type of construction operation and performance of contract work outlined as follows:
  - (A) **H(Grading and Excavating).** Covers the digging, moving and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation can be executed with the use of hand and power tools and machines commonly used for these types of digging, moving and material placing. Covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. Also includes clearing and grubbing, and erosion control activities.
  - (B) **S(Boring and Tunneling).** Covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface including the bracing and compacting of such passageways to make them safe for the purpose intended. Includes preparation of the ground surfaces at points of ingress and egress.
  - (C) **PU(Communications).** Covers the installation of the following:
    - (i) All types of pole lines, and aerial and

- underground distribution cable for telephone systems;
- (ii) Aerial and underground distribution cable for Cable TV and Master Antenna TV Systems capable of transmitting R.F. signals;
- (iii) Underground conduit and communication cable including fiber optic cable; and
- (iv) Microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. ~~signals~~ signals; and installation of PCS or cellular telephone towers and sites.
- (D) S(Concrete Construction). Covers the construction and installation of foundations, pre-cast silos and other concrete tanks or receptacles, prestressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots and highways.
- (E) PU(Electrical-Ahead of Point of Delivery). Covers the construction, installation, alteration, maintenance or repair of an electrical wiring system, including substations or components thereof, which is or is intended to be owned, operated and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers.
- (F) PU(Fuel Distribution). Covers the construction, installation, alteration, maintenance or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals and slurries through pipeline from one station to another. Includes all excavating, trenching and backfilling in connection therewith. Covers the installation, replacement and removal of above ground and below ground fuel storage tanks.
- (G) PU(Water Lines and Sewer Lines). Covers construction work on water and sewer mains, water service lines, and house and building sewer lines as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. Includes pavement patching, backfill and erosion control as part of such construction.
- (H) PU(Water Purification and Sewage Disposal). Covers the performance of construction work on water and wastewater treatment facilities and covers all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters which are ancillary to such construction of water and wastewater treatment facilities. Covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), and S(Metal Erection) as part of such work on water and wastewater treatment facilities.
- (I) S(Insulation). Covers the installation, alteration or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. Does not include the insulation of mechanical equipment and ancillary lines and piping.
- (J) S(Interior Construction). Covers the installation of acoustical ceiling systems and panels; drywall partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets and millwork. Includes the removal of asbestos and replacement with non-toxic substances.
- (K) S(Marine Construction). Covers all marine construction and repair activities and all types of marine construction in deep-water installations and in harbors, inlets, sounds, bays, and channels; covers dredging, construction and installation of pilings, piers, decks, slips, docks, and bulkheads. Does not include structures required on docks, slips and piers.
- (L) S(Masonry Construction). Covers the installation, with or without the use of mortar or adhesives, of the following:
  - (i) Brick, concrete block, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry;
  - (ii) Installation of fire clay products and refractory construction;
  - (iii) Installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). Covers the building, construction and repair of railroad lines including:
  - (i) The clearing and filling of rights-of-



- way;
- (ii) Shaping, compacting, setting and stabilizing of road beds;
- (iii) Setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences and gates; and
- (iv) Construction and repair of tool sheds and platforms.
- (N) S(Roofing). Covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" shall be defined for purposes of this Subparagraph to include, among other things, cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.
- (O) S(Metal Erection). Covers:
  - (i) The field fabrication, erection, repair and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment and structure; and
  - (ii) The layout, assembly and erection by welding, bolting or riveting such metal products as, but not limited to, curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, stadium and arena seating, bleachers, and fire escapes.
- (P) S(Swimming Pools). Covers the construction, service and repair of all swimming pools. Includes:
  - (i) Excavation and grading;
  - (ii) Construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
  - (iii) Installation of all equipment including pumps, filters and chemical feeders. Does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the

making of any electrical connections.

- (Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation and/or demolition activities.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examination for the classifications in question. The license granted to an applicant who meets the qualifications for all classifications will carry with it a designation of "unclassified."

*Authority G.S. 87-1; 87-10.*

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## CHAPTER 46 - BOARD OF PHARMACY

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to adopt rule cited as 21 NCAC 46 .1813; amend 21 NCAC 46 .1601, .1603 - .1604, .1804, .1810, .2103, .2201, .2301. Notice of Rule-making Proceedings was published in the Register on August 1, 1997.

**Proposed Effective Date:** August 1, 1998

**Public Hearings will be conducted at:**

9:00 a.m.

October 22, 1997

Campbell University

Taylor Hall

Trustee Room

Buies Creek, NC

9:30 a.m.

December 17, 1997

Mountain Area Health Education Center

501 Biltmore Avenue

Classroom 5

Asheville, NC

**Reason for Proposed Action:**

*21 NCAC 46 .1601 - to specify that no more than two unlicensed personnel who spend a majority of their time performing functions constituting dispensing shall be on duty in the pharmacy per pharmacist on duty.*

*21 NCAC 46 .1603 - to specify when new permits are required.*

*21 NCAC 46 .1604 - to specify when a permit can be*

transferred.

21 NCAC 46 .1804 - to require no alteration of prescription orders by a party outside the practitioner-pharmacist-patient relationship and to specify requirements for delivery of prescription orders to a patient off site.

21 NCAC 46 .1810 - to specify compounding requirements.

21 NCAC 46 .1813 - to specify requirements for electronically transferred prescription orders.

21 NCAC 46 .2103 - to require a health care facility pharmacist to be a member of the Board and to change geographic representation areas from 5 to 4.

21 NCAC 46 .2201 - to specify requirements for an inactive pharmacist.

21 NCAC 46 .2301 - to require the indication for the drug prescribed to be on the prescription order.

**Comment Procedures:** Persons wishing to present oral data, views or arguments on a proposed rule or rule change, may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The Board's address is PO Box 459, Carrboro, NC 27510-0459. Written submission of comments or argument will be accepted at any time up to and including December 17, 1997.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

## SECTION .1600 - LICENSES AND PERMITS

### .1601 PHARMACY PERMITS

(a) Applications for pharmacy permits, whether original or renewal, shall be made upon forms provided by the Board. The Board shall not issue any original or annual renewal pharmacy permit until the Board is satisfied that:

- (1) The pharmacist-manager is sure that at all times adequate qualified personnel has been secured by the management of the store to properly render pharmaceutical service in the manner prescribed by law.
- (2) Any and all unlicensed ~~clerks~~ personnel have been instructed that they may ~~render pharmaceutical service~~ perform functions constituting dispensing only as an aid to and under the immediate supervision of a registered pharmacist. No more than two unlicensed personnel who spend a majority of their time performing functions constituting dispensing shall be on duty in the pharmacy per pharmacist on duty.
- (3) The following minimum technical equipment is maintained:
  - (A) Graduates. Capable of accurately measuring volumes from 1 ml to at least 500 ml;
  - (B) Mortars and pestles:
    - (i) one -- glass;

- (ii) one -- "Wedgwood";
- (C) Stirring Rods. Two different sizes made of glass or rubber;
- (D) Ointment slab or suitable substitute;
- (E) Class A prescription or electronic balances and appropriate weights, suitable for all required weighings, at least one of which must be sensitive to six mg;
- (F) Suitable facilities for recording and filing prescriptions as required by G.S. 90-85.26;
- (G) Spatulas:
  - (i) stainless steel, at least three assorted sizes;
  - (ii) non-metallic, one of any size;
- (H) Useable Supplies. Equipped with safety closures where required:
  - (i) prescription bottles, 1 to 32 fluid ounces;
  - (ii) dropper bottles, ½ to 2 fluid ounces;
  - (iii) assorted pill and tablet containers;
  - (iv) empty capsules, No. 00 to No. 3;
  - (v) powder papers;
  - (vi) ointment jars, assorted;
  - (vii) prescription labels;
  - (viii) all appropriate auxiliary labels;
- (I) Heating apparatus;
- (J) Refrigerator;
- (K) Reference library, as follows:
  - (i) the latest edition of the United States Pharmacopoeia (USP) and National Formulary and supplements thereto or a standard commentary thereon;
  - (ii) a copy of the pharmacy laws of North Carolina, including the North Carolina Controlled Substances Act and the rules adopted pursuant thereto, and the North Carolina Pharmacy Practice Act and the rules of the Board;
  - (iii) a copy of the Federal Controlled Substances Act and the regulations adopted pursuant thereto;
  - (iv) a Schedule V controlled substances register (where these preparations are sold other than on prescriptions);
  - (v) a medical dictionary;
  - (vi) current editions of generally accepted reference books on the following subjects:
    - (I) drug interactions,
    - (II) clinical pharmacology,
    - (III) USP Dispensing Information or its equivalent, and
    - (IV) if IV admixture services are provided, a reference on Parenteral Incompatibilities.
- (4) The pharmacy is equipped with sanitary appliances including lavatory facilities with hot and cold



running water; is adequately lighted; and is kept in a clean, orderly, and sanitary condition.

- (5) All prescription medications are labeled in accordance with G.S. 106-134 and 106-134.1.

(b) In addition to the requirements for issuance and renewal of a pharmacy permit imposed by a statute and by other rules of the Board, a permit shall not be issued or renewed to any person to operate a pharmacy wherein the prescriptions of medical practitioners are compounded or dispensed and distributed when such distribution is effected by mail and the practitioner-pharmacist-patient relationship does not exist, until the Board is satisfied that:

- (1) The pharmacy maintains records of prescriptions compounded or dispensed and distributed in manner that is readily retrievable;
- (2) During the pharmacy's regular hours of operation but not less than six days per week, for a minimum of forty hours per week, a toll-free telephone service is provided to facilitate communication between patients and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed drugs;
- (3) The pharmacy complies with all lawful orders, directions, and requests for information from the Boards of pharmacy of all states in which it is licensed and all states into which it distributes prescription drugs;
- (4) The pharmacy complies with all USP and FDA requirements regarding the storage, packaging, and shipping of prescription medications. The pharmacist-manager and all other pharmacists employed in the pharmacies permitted pursuant to this Paragraph shall be subject to all Federal and State statutes and regulations concerning the dispensing of prescription medications including, but not limited to, 21 NCAC 46.1801 and .1805 and 21 CFR 1306.01, 1306.05, and 1306.21.

(c) The Board shall not issue an original or renewal permit to any person to operate a drugstore or pharmacy as a department in or a part of any other business serving the general public (except hospitals, nursing homes, and similar institutions subject to the provisions of .0300 of this Chapter) unless such pharmacy facility:

- (1) is physically separated from such other business;
- (2) is separately identified to the public both as to name and any advertising;
- (3) completes all transactions relative to such pharmacy within the registered facility; and
- (4) meets the same requirements for registration as all other pharmacies.

(d) Permits to operate pharmacies, whether original or renewal, shall be issued to the pharmacist-manager of such pharmacy pursuant to a joint application of the owner and pharmacist-manager for the conduct and management of said pharmacy. The issuance of said permit shall not be complete and the permit shall not be valid until it has been

countersigned by the pharmacist-manager as represented in the application. The permit so issued is valid only so long as the pharmacist-manager to whom it was issued assumes the duties and responsibilities of pharmacist-manager. Permits may be reissued at any time to a successor pharmacist-manager pursuant to the proper amendment of the application for the permit.

(e) Upon application, the Board may issue and renew separate permits for pharmacies operating at one location. Records for each permitted pharmacy must be maintained separately. Prior to issuance of an original permit, each pharmacy shall submit a plan to the Board that shall assure accountability for the actions of each pharmacy at the location.

*Authority G.S. 90-85.6; 90-85.21.*

#### **.1603 WHEN PERMITS REQUIRED**

A new pharmacy, device, or medical equipment permit issued by the Board is required for a new pharmacy, location, a change to a successor business entity, or a change of more than 50 percent ownership interest in the ~~entity which owns the pharmacy, permit holder or any parent corporation,~~ except as provided in Rule .1604 of this Section.

*Authority G.S. 90-85.6; 90-85.21; 90-85.22.*

#### **.1604 TRANSFER OF PERMITS ALLOWED**

(a) A valid pharmacy, device, or medical equipment permit may be transferred and a new permit is not required in the following situations:

- (1) where the change of ownership does not involve the acquisition of more than 50 percent interest in the ~~entity which owns the pharmacy, permit holder or any parent corporation;~~ or
- (2) the pharmacy permit holder is ~~owned by~~ a publicly-traded corporation which remains publicly-traded and ~~maintains ownership of the pharmacy, continues to hold the permit;~~ or
- (3) the pharmacy permit holder is ~~owned by~~ a corporation which is a wholly-owned ~~subsidiary of another corporation subsidiary,~~ and ~~there is no any change in the parent-subsidiary relationship; the ownership of any parent corporation is due to the stock of such corporation being publicly-traded.~~

(b) A permit which is involved in a pending disciplinary proceeding may not be surrendered, terminated, or transferred.

*Authority G.S. 90-85.6; 90-85.21; 90-85.22.*

### **SECTION .1800 - PRESCRIPTIONS**

#### **.1804 PRESCRIPTION: RECEIVING AND DISPENSING**

(a) In order to assure that the practitioner-pharmacist-patient relationship exists and to promote the safe and secure



distribution of drugs and devices, prescription orders may be received for filling and refilling only by a pharmacist or a bona fide employee of the pharmacy. The pharmacist-manager of the pharmacy shall be ultimately responsible for the safe, lawful and secure receipt of prescription orders and delivery of prescription drugs. Notwithstanding the provisions of this rule, prescription drugs also may be delivered by mail in accordance with the provisions of Rule 21 NCAC 46.1601(7). A party outside the practitioner-pharmacist-patient relationship may not cause or attempt to cause the alteration of a prescription order.

(b) In order to promote the safe and secure distribution of drugs, devices, and medical equipment, prescription orders may be received for filling and refilling only by the person in charge of the facility holding the device and medical equipment permit or a bona fide employee of the facility. The person in charge shall be ultimately responsible for the safe, lawful and secure receipt of prescription orders and delivery of prescription drugs, devices, and medical equipment.

(c) Prescription drugs, devices and medical equipment may be delivered off site to the patient under the following conditions:

- (1) Delivery shall be to a person at least eighteen years of age, either the patient or another person who resides with the patient or is responsible for care of the patient.
- (2) At the time of delivery, the permit holder shall provide the person accepting delivery with a form to sign, which lists the prescription drugs, devices or medical equipment delivered and certifies that the person accepting delivery meets the criteria described in this Rule. The form shall be maintained in the pharmacy for three years with the other records concerning the dispensing of the prescription drugs, devices or medical equipment and be readily retrievable.

Authority G.S. 90-85.6; 90-85.32.

## .1810 COMPOUNDING

In accordance with G.S. 90-85.3(c) and (r), and G.S. 90-85.6(a), the Board has primary jurisdiction over compounding occurring in locations holding a pharmacy permit, and such compounding shall comply with the following:

- (1) based on the existence of a practitioner-pharmacist-patient relationship and the presentation of a valid prescription, or in anticipation of prescription orders based on established prescribing patterns, a pharmacist may compound a drug product for an individual patient. A pharmacist also may compound a drug product prior to receiving a valid prescription based on a history of receiving valid prescriptions generated within an established practitioner-pharmacist-patient relationship. Compounded drug products shall not be offered to

other entities for resale; however, practitioners may obtain compounded drug products to administer to patients within the scope of their professional practice;

- (2) compounding pharmacies and pharmacists may advertise or otherwise promote compounding services; however, they may not solicit business by offering to compound specific drug products;
- (3) the pharmacist is responsible for all aspects of compounding; however, unlicensed personnel working under the supervision of the pharmacist may assist in compounding;
- (4) drug substances used for compounding shall be USP or NF grade, or if unavailable, AR, CP, ACS, or FCC grade substances may be used. If none of the foregoing grades are available, then the pharmacist must establish the purity and safety of the ingredient prior to its use. Manufactured drug products used for ingredients must be labeled with a batch control number and a future expiration date;
- (5) equipment and utensils used for compounding shall not be reactive, additive or absorptive so that the safety, identity, strength, quality, and purity of the compounded drug product will not be adversely affected. All compounding equipment and utensils shall be cleaned and sanitized prior to use. A compounding pharmacy shall have written procedures and formulas for the compounding of drug products;
- (6) any excess compounded drug product retained by the pharmacy shall be labeled with a complete list of ingredients or reference to such information, the preparation date, and an expiration date based upon the pharmacist's professional judgment. The excess compounded drug product shall be stored under conditions to preserve its strength, quality and purity;
- (7) All locations holding a pharmacy permit where ingredients are routinely compounded for dispensing, as defined in G.S. 90-85.3(c) other than with the exception of the reconstitution of oral antibiotics, must the pharmacy shall maintain a log showing the name or initials of the person who compounded the ingredients a drug product and the name or initials of the pharmacist who checked the compounded prescription drug, drug product. Such log shall be maintained for a period of three years.
- (8) the pharmacy shall maintain a recordkeeping system from which the date of purchase, supplier, manufacturer, and lot number or other identifier of each ingredient can be determined for each compounded drug product dispensed. All pharmacy records resulting from compounding, including the compounding log, shall be readily retrievable and maintained in the pharmacy for a period of three years;
- (9) in addition to the requirements of this Section, the

compounding of radio pharmaceutical drug products shall comply with Section .2700 of this Chapter; and

- (10) in addition to the requirements of this Section, the compounding of sterile parenteral drug products shall comply with Section .2800 of this Chapter.

*Authority G.S. 90-85.6; 90-85.32.*

### **.1813 ELECTRONIC TRANSMISSION OF PRESCRIPTION ORDERS**

(a) "Electronic transmission" means transmission of the exact visual image of a document by way of electronic equipment other than facsimile machine described in Rule .1807 of this Section.

(b) All prescription drug orders communicated by way of electronic transmission shall:

- (1) be transmitted directly to a pharmacist in a pharmacy of the patient's choice with no intervening person having access to the prescription drug order;
- (2) identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the pharmacy intended to receive the transmission;
- (3) be transmitted by an authorized practitioner or his designated agent; and
- (4) be deemed the original prescription drug order, provided it meets all requirements of federal and state laws and regulations.

(c) The prescribing practitioner may authorize his agent to electronically transmit a prescription drug order to a pharmacist in a pharmacy provided that the identity of the transmitting agent is included in the order.

(d) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of an electronically transmitted prescription drug order consistent with existing federal and state laws and regulations.

(e) All equipment for receipt of prescription drug orders by electronic transmission shall be maintained so as to ensure against unauthorized access.

(f) There shall be no additional charge to the patient because the prescription order was electronically transmitted.

(g) Prescriptions may be transferred electronically if all the requirements of Rule .1806 of this Section are met.

*Authority G.S. 90-85.6; 90-85.32.*

### **SECTION .2100 - ELECTIONS**

#### **.2103 GEOGRAPHIC REPRESENTATIONS**

(a) Four of the Pharmacist pharmacist members of the Board shall not practice in a Health Care Facility Pharmacy as defined in Rule .1317 of this Chapter and shall be elected from five four geographic areas of the state. These five four geographic areas are:

- (1) The Western District, consisting of Alexander,

Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Davie, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rowan, Rutherford, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin and Yancey Counties;

- (2) ~~The Northern District consisting of Alamance, Caswell, Forsyth, Guilford, Orange, Person, Rockingham, Stokes, Surry and Yadkin Counties;~~

- (3) (2) The Central District, consisting of Anson, Cabarrus, Chatham, Davidson, Davis, Iredell, Lee, Forsyth, Guilford, Mecklenburg, Montgomery, Moore, Randolph, Richmond, Rowan, Rockingham, Stanly Stanly, Stokes and Union Counties;

- (4) (3) The Northeastern District, consisting of Alamance, Bertie, Camden, Caswell, Chatham, Chowan, Currituck, Dare, Durham, Edgecombe, Franklin, Gates, Granville, Halifax, Hertford, Johnston, Hyde, Martin, Nash, Northampton, Orange, Pasquotank, Perquimans, Person, Tyrell, Vance, Wake, Warren, Washington and Wilson Counties; and

- (5) (4) The Southeastern District, consisting of Anson, Beaufort, Bladen, Brunswick, Carteret, Columbus, Craven, Cumberland, Duplin, Greene, Harnett, Hoke, Johnston, Jones, Lee, Lenoir, Moore, New Hanover, Onslow, Pamlico, Pender, Pitt, Richmond, Robeson, Sampson, Scotland and Wayne Counties.

(b) The remaining pharmacist member of the Board shall practice in a Health Care Facility Pharmacy as defined in Rule .1317 of this Chapter and shall be nominated and elected without regard to geographic area.

*Authority G.S. 90-85.7.*

### **SECTION .2200 - CONTINUING EDUCATION**

#### **.2201 HOURS: RECORDS: PROVIDERS: CORRESPONDENCE: RECIPROCITY**

(a) As a condition of license renewal, each practicing pharmacist holding an active license shall report on renewal forms the hours of continuing education obtained during the preceding year. Annual accumulation of ten hours is considered satisfactory to meet the quantitative requirement of this Rule.

(b) All records, reports of accredited hours and certificates of credit shall be kept at the pharmacist's regular place of practice for verification by inspectors during regular or other visits. The Board reserves the right to require submission of such documentation on a random basis. Pharmacists who do not practice regularly at one location shall produce such records within 24 hours of a request from Board authorized personnel. All records of hours and certificates of credit shall



be preserved for at least three years.

(c) All continuing education shall be obtained from a provider approved by the Board. In order to receive credit, continuing education courses should have the purpose of increasing the participant's professional competence and proficiency as a pharmacist. At least five hours of the continuing education credits must be obtained through contact programs in any calendar year. Contact programs are those programs in which there is an opportunity for live two-way communication between the presenter and attendee.

(d) Continuing education shall not serve as a barrier to reciprocity; however all licensees by reciprocity must observe the continuing education standards specified in (a), (b) and (c) of this Rule within the first renewal period after licensure in this state.

(e) Pharmacists who list their status as "Inactive" on the annual application for license renewal and who certify that they are no longer engaged in the practice of pharmacy are not required to obtain the continuing education hours required by this Rule. Pharmacists on inactive status are prohibited from practicing pharmacy in this State. Should a pharmacist on inactive status wish to return to active status, then all continuing education hours for the period of inactive status must be obtained. A pharmacist who has been on inactive status for five or more years must appear before the Board and submit evidence that he can safely and properly practice pharmacy before he can be returned to active status.

Authority G.S. 90-85.6; 90-85.17; 90-85.18.

## SECTION .2300 - PRESCRIPTION INFORMATION AND RECORDS

### .2301 PRESCRIPTION: DRUG ORDER REQUIREMENTS

- (a) Prescription orders shall include, but not be limited to:
- (1) date of issuance;
  - (2) name and address of patient;
  - (3) name, address and telephone number of prescriber except that indication of the name of the prescriber is sufficient if a data file specified in (b) of this Rule is current and in effect;
  - (4) Drug Enforcement Agency (DEA) number of prescriber in the case of controlled substances;
  - (5) name, strength, dosage form and quantity of drug prescribed;
  - (6) refills if authorized or, in institutions, the stop date;
  - (7) route of administration of drug prescribed; and
  - (8) directions for ~~use~~, use; and
  - (9) indication for drug prescribed.

(b) Information in Subparagraphs (a)(2), (a)(3), (a)(4), (a)(6) and (a)(7) may be stored in a readily retrievable data file specifically compiled for use in the pharmacy, which is not a commercial publication, in lieu of the requirements of the named Subparagraphs.

Authority G.S. 90-85.6(a); 90-85.32; 90-106(h).



*The Codifier of Rules has entered the following temporary rule(s) in the North Carolina Administrative Code. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.*

**TITLE 16 - DEPARTMENT OF PUBLIC  
EDUCATION**

**Rule-making Agency:** NC Standards Board for Public School Administration

**Rule Citation:** 16 NCAC 7 .0201 - .0202, .0301 - .0303

**Effective Date:** January 1, 1998

**Findings Reviewed and Approved by:** Beecher R. Gray

**Authority for the rule-making:** G.S. 115C-290.5(a)(6)

**Reason for Proposed Action:** The purpose of this rulemaking is to establish procedures for the administration of an examination to be used in the licensing of principals as required by G.S. 115C-290.5(a). The intent of the new licensure examination is to identify persons eligible for licensure as public school administrators. A passing score on the Public School Administrator Exam, which is the School Leaders Licensure Assessment established by Educational Testing Services (ETS), will be a requirement for any individual seeking license as a principal effective January 1, 1998.

**Comment Procedures:** Comments, statements, and data and other information may be submitted in writing to Linda C. Stevens, Executive Director, NC Standards Board for Public School Administration, Room 324, Education Building, 301 N. Wilmington St., Raleigh, NC 27601-2825.

**CHAPTER 7 - NORTH CAROLINA STANDARDS  
BOARD FOR PUBLIC SCHOOL ADMINISTRATION**

**SECTION .0200 - EXAMINATION PROCEDURES**

**.0201 APPLICATION FOR EXAMINATION OR  
REGISTRATION**

Application for admission to take the Public School Administrator Exam for the principalship must be made on forms supplied by the Board along with a non-refundable application fee of fifty dollars (\$50.00) for the first application. The applications are available upon request made in person or by writing to the Board. Applicants must also supply the Board with a statement from the approved Institution of Higher Education (IHE) where preparation was completed that the individual has satisfied the educational requirements of G.S. 115C-290.7(a)(3). An application process must be begun and the proper application fee received in the Board office 60 days prior to the exam. All data received by the Board in connection with the application

shall become a part of the application and shall also become a permanent record of the Board.

**History Note:** Authority G.S. 115C-290.5(a)(6);  
*Temporary Adoption Eff. January 1, 1998.*

**.0202 WRITTEN EXAMINATION**

(a) The North Carolina Public School Administrator Exam for the principalship shall be the School Leaders Assessment established by Educational Testing Services (ETS). The fee for the exam shall be established and collected by ETS.

(b) Three written exams shall be held in locations throughout the state during a calendar year.

(c) The Board shall set the passing score for the exam. The Exam shall be graded in accordance with the methods and procedures established by ETS. Applicants may retake the examination at subsequent scheduled administrations.

**History Note:** Authority G.S. 115C-290.5(a)(6);  
*Temporary Adoption Eff. January 1, 1998.*

**SECTION .0300 - RULE MAKING PROCEDURES**

**.0301 RULE-MAKING PETITIONS**

A person may petition the Board to adopt a new rule or change or amend an existing rule by sending a rule-making petition to the Board at the Board's address. The petition must be titled "Petition for Rule Making" and must include the following information: the name and address of the person submitting the petition; a citation to any rule for which a change or repeal is requested; a draft of any proposed rule or amended rule; an explanation of why the new rule, amendment or repeal is requested and the effects of the new rule, amendment, or repeal on the Board's procedure or the persons regulated by the Board; any other information the person submitting the petition considers relevant. The Board must decide whether to grant or deny a petition for rule-making within 120 days of receiving the petition. In making its decision, the Board will consider the information submitted with the petition and any other relevant information.

**History Note:** Authority G.S. 115C-290.5(a)(6); 150B-4;  
*Temporary Adoption Eff. January 1, 1998.*

**.0302 NOTICE MAILING LIST**

Any persons desiring to be placed on the mailing list for Board rule-making notices may file such request in writing, furnishing their names and mailing addresses to the Board. The letter of request shall state those subject areas within the authority of the Board for which the person wants notice. The Board may require reasonable postage and stationery, and

duplicating cost to be paid by persons receiving such notice.

*History Note: Authority G.S. 115C-290.5(a)(6); 150B-4; Temporary Adoption Eff. January 1, 1998.*

**.0303 PROCEDURE FOR DECLARATORY RULING**

(a) The Board shall decide whether to grant or deny a request to make a declaratory ruling on the validity of a rule or on the applicability of particular facts of a statute or to a rule or order of the Board within 60 days of receiving the petition. The Board may refuse to grant a petition for a declaratory ruling when there has been a similar factual determination in a contested case or one is likely to be made in a pending contested case or investigation.

(b) The Board will presume that its current rules are valid unless this presumption is rebutted by persuasive evidence as offered in the petition for the declaratory ruling. When the Board determines that a rule is invalid, the board shall initiate rule-making proceedings and send written notice of the proceeding to the person who submitted the request.

*History Note: Authority G.S. 115C-290.5(a)(6); 150B-4; Temporary Adoption Eff. January 1, 1998.*

**TITLE 18 - SECRETARY OF STATE**

**Rule-making Agency:** *Department of Secretary of State*

**Rule Citation:** 18 NCAC 6 .1104, .1205 - .1206, .1211 - .1212, .1304, .1401, .1410 - .1412, .1506, .1509, .1702 - .1706, .1712 - .1714, .1801 - .1806, .1809, .1811

**Effective Date:** *October 1, 1997*

**Findings Reviewed by Julian Mann:** *Approved*

**Authority for the rule-making:** G.S. 78A-17(9); 78A-17(17); 78A-31(a); 78A-31(b); 78A-36(a); 78A-37(a); 78A-37(b); 78A-37(d); 78A-38(b); 78A-38(c); 78A-49(a); 78A-49(b); 78A-50; 78C-16(b); 78C-16(d); 78C-17(a); 78C-17(a1); 78C-17(b); 78C-17(b1); 78C-17(e); 78C-18(d); 78C-19(a); 78C-30(a); 78C-30(b); 78C-30(c); 78C-30(d); 78C-31; 78C-46(b)

**Reason for Proposed Action:** *Senate Bill 438 and Senate Bill 439 both necessitate the adoption of the proposed rules. These two bills become effective on October 1, 1997, after which the existing rules will be inconsistent with the new laws. Adoption of temporary rules is necessary due to the short amount of time between enactment of the new legislation and the effective date of the new laws.*

**Comment Procedures:** *Persons who wish to make written or verbal comment regarding these proposed amendments, adoptions and repeals should contact: Mr. David Massey,*

*Deputy Securities Administrator, NC Secretary of State, 300 N. Salisbury Street, Raleigh, NC 27603-5909, Telephone (919)733-3924, Fax (919)821-0818.*

**CHAPTER 6 - SECURITIES DIVISION**

**SECTION .1100 - GENERAL PROVISIONS**

**.1104 DEFINITIONS**

(a) "Act" shall mean the North Carolina Securities Act, Chapter 78A of the North Carolina General Statutes, as same has been or may be from time to time amended.

(b) "Commercial Paper," as referred to in G.S. 78A-16(10), shall mean any note, draft, bill of exchange or bankers acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited or any guarantee of such paper or of any such renewal. Commercial paper shall also exemplify the following characteristics:

- (1) prime quality negotiable paper of a type not ordinarily purchased by the general public;
- (2) issued to facilitate well recognized types of current operational business requirements; and
- (3) of a type eligible for discounting by Federal Reserve Banks.

(c) "Direct Participation Program" shall mean a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when used herein and in any rules or regulations adopted pursuant hereto the term shall mean each of the separate entities or programs making up the overall program and/or the overall program itself. Excluded from this definition are Subchapter S corporate offerings, real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403 (a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, and any company registered pursuant to the Investment Company Act of 1940.

(d) "SEC" shall mean the Securities and Exchange Commission.

(e) "NASD" shall mean the National Association of Securities Dealers, Inc.

(f) "NASAA" shall mean the North American Securities Administrators Association, Inc.

(g) "CRD" shall mean the Central Registration Depository.

(h) "Investment Contract" as used in G.S. 78A-2(11) includes:



- (1) Any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. In this Subparagraph a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of a third party; and
- (2) Any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of this initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

(i) "Recognized Securities Manual" shall mean a publication which contains the information required by G.S. 78A-17(2)a. and which has been designated, by rule or by order, as a "recognized securities manual" by the administrator.

(j) "Form D" is defined as the document adopted by the Securities and Exchange Commission, in effect on September 1, 1996 and as may be amended by the SEC from time to time, entitled "FORM D: Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

*History Note: Authority G.S. 78A-49(a);*

*Eff. April 1, 1981;*

*Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984;*

*Temporary Amendment Eff. October 1, 1997.*

## SECTION .1200 - EXEMPTIONS

### **.1205 LIMITED OFFERINGS PURSUANT TO G.S. 78A-17(9)**

(a) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a security made in reliance upon Rule 505 ~~or Rule 506~~ of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.505 (1982) ~~and 17 C.F.R. 230.506 (1982)~~ (and as subsequently amended) shall comply with the provisions of Rules .1206, .1207 and .1208 of this Section; provided that such compliance shall not be required if the security is offered and sold only to persons who will be actively engaged, on a regular basis, in the management of the issuer's business; and provided further, that compliance with provisions of Paragraphs (a), (b), and (c) of Rule .1208 of this Section shall not be required if the security is offered to

not more than five individuals who reside in this State.

(b) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a direct participation program security made solely in reliance upon an exemption from registration contained in Section 4(2) or Section 3(a)(11) of the Securities Act of 1933, as amended, or made solely in reliance upon Rule 504 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.504 (1982), (and as subsequently amended), shall comply with the following conditions and limitations:

- (1) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of the security sold to a resident of this State unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.
- (2) In all sales of direct participation program securities, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities shall be applicable.
- (3) Any prospectus or disclosure document used in offering the securities in this state shall disclose conspicuously the legend(s) required by the provisions of Rule .1316 of this Chapter.
- (4) Not less than 10 business days prior to any sale of the securities to a resident of this State which shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser, the issuer shall file with the administrator, or cause to be so filed:

(A) A statement signed by the issuer and acknowledged before a notary public or other similar officer:

- (i) identifying the issuer (including name, form of organization, address and telephone number);
- (ii) identifying the person(s) who will be selling the securities in this State (and in the case of such persons other than the issuer and its officers, partners and employees, describing their relationship with the issuer in connection with the transaction and the basis of their compliance with or exemption from the requirements of G.S. 78A-36) and describing any commissions, discounts, fees or other remuneration or compensation to be paid to such persons;
- (iii) containing a summary of the proposed offering including:



- (I) a description of the securities to be sold;
  - (II) the name(s) of all general partners of an issuer which is a partnership and, with respect to a corporate issuer or any corporate general partner(s) of any issuer which is a partnership, the date and place of incorporation and the names of the directors and executive officers of such corporation(s);
  - (III) the anticipated aggregate dollar amount of the offering;
  - (IV) the anticipated required minimum investment, if any, by each purchaser of the securities to be offered;
  - (V) a brief description of the issuer's business and the anticipated use of the proceeds of the offering; and
  - (VI) a list of the states in which the securities are proposed to be sold;
- (iv) containing an undertaking to furnish to the administrator, upon written request, evidence of compliance with Subparagraphs (1), (2), and (3) of this Paragraph (b); and
  - (v) containing an undertaking to furnish to the administrator, upon written request, a copy of any written document or materials used or proposed to be used in connection with the offer and sale of the securities.
- (B) A consent to service of process naming the North Carolina Secretary of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or other similar officer; and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable;
  - (C) A non-refundable filing fee in the amount of twenty-five dollars (\$25.00), payable to the North Carolina Secretary of State.
- (5) Compliance with the provisions of Subparagraph (4) of this Rule shall not be required if the security is offered to not more than five individuals who reside in this State.

(c) Neither the issuer nor any person acting on the issuer's behalf shall offer, offer to sell, offer for sale or sell the securities claimed to be exempt under G.S. 78A-17(9) by any means or any form of general solicitation or general advertising.

(d) The administrator may, by order, waive any condition of or limitation upon the availability of the exemption provided by G.S. 78A-17(9).

*History Note: Filed as a Temporary Rule Eff. October 1, 1983, for a Period of 120 Days to expire on January 29, 1984;*

*Authority G.S. 78A-17(9); 78A-49(a);*

*Eff. January 1, 1984;*

*Amended Eff. October 1, 1988;*

*Temporary Amendment Eff. October 1, 1997.*

#### **.1206 LIMITED OFFERING EXEMPTION PURSUANT TO G.S. 78A-17(17)**

(a) Transactions made in reliance upon Rule 505 or Rule 506 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.505 (1982) and ~~17 C.F.R. 230.506~~ (1982) (and as subsequently amended), including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825, shall be exempt from the requirements of G.S. 78A-24, provided there is compliance with the conditions and limitations of this Rule .1206 and Rules .1207 and .1208 of this Section.

- (1) No exemption under this Rule .1206 is available for the offer or sale of securities if the issuer or any other person or entity to which Rule .1206 applies is disqualified pursuant to Rule .1207 of this Section unless the administrator, upon application and a showing of good cause by the issuer, or such other person or entity, modifies or waives the disqualification.
- (2) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of any security sold to a resident of this State in reliance upon the exemption provided by this Rule .1206 unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.
- (3) In all sales to those accredited investors defined in 17 C.F.R. 230.501(a)(5) who reside in this State (except sales to such accredited investors made by or through a dealer registered under G.S. 78A-36) and in all sales to nonaccredited investors who reside in this State the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:
  - (A) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his/her other security holdings and as to his/her financial situation

and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10 percent of the investor's net worth, it is suitable.

- (B) The purchaser, either alone or with his/her purchaser representative(s), has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investments.
- (4) In all sales of direct participation programs securities pursuant to the exemption provided by this Rule .1206, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities shall be applicable in addition to all other requirements of this Rule .1206.
- (5) Any prospectus or disclosure document used in this state in connection with an offer and sale of securities made in reliance upon the exemption provided by this Rule .1206 shall disclose conspicuously the legend(s) required by the provisions of Rule .1316 of this Chapter.
- (6) Nothing in the exemption provided by this Rule .1206 is intended to or should be construed as in any way relieving the issuer or any person acting on behalf of the issuer from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.
- (7) Transactions which are exempt under this Rule may not be combined with offers and sales exempt under any other rule or section of this Act; however, nothing in this limitation shall act as an election. Should for any reason, an offer and sale of securities made in reliance upon the exemption provided by this Rule .1206 fail to comply with all of the conditions hereof, the issuer may claim the availability of any other applicable exemption.
- (8) A failure to comply with a term, condition or requirement of Subparagraphs (a)(2) and (a)(3) of this Rule will not result in loss of the exemption from the requirements of G.S. 78A-24 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:
  - (A) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and
  - (B) the failure to comply was insignificant with respect to the offering as a whole; and
  - (C) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subparagraphs (a)(2) and (a)(3).

Where an exemption is established only through reliance upon this Subparagraph (8) of this Rule, the failure to comply shall nonetheless be actionable by the administrator under G.S.

78A-47.

- (9) In any proceeding involving this Rule .1206, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.
- (10) In view of the objective of this Rule .1206 and the purpose and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule .1206, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule .1206 or Rules .1207 and .1208 of this Section.
- (11) The administrator may, by order, waive any condition of or limitation upon the availability of the exemption provided by this Rule .1206.
- (12) The exemption provided by this Rule .1206 shall be known and may be cited as the "North Carolina Limited Offering Exemption."
  - (b) Pursuant to G.S. 78A-18, the administrator may by order deny or revoke the exemption provided by this Rule .1206 with respect to a specific security or security transaction.

*History Note:* Filed as a Temporary Rule Eff. October 1, 1983, for a Period of 120 Days to Expire on January 29, 1984;

*Authority* G.S. 78A-17(17); 78A-49(a);

*Eff.* January 1, 1984;

*Amended Eff.* September 1, 1990; October 1, 1988;

*Temporary Amendment Eff.* October 1, 1997.

#### **.1211 NOTICE FILING PROCEDURES FOR RULE 506 OFFERINGS**

An issuer offering a security that is a "covered security" under Section 18(b)(4)(D) of the Securities Act of 1933 shall file a notice on SEC Form D, a consent to service of process on a form prescribed by the Administrator, and pay a fee of seventy-five dollars (\$75.00) no later than 15 days after the first sale in this State of such security covered under federal law.

*History Note:* Authority G.S. 78A-31(b); 78A-49(a);

*Temporary Adoption Eff.* October 1, 1997.

#### **.1212 NOTICE FILING PROCEDURES FOR OFFERINGS OF INVESTMENT COMPANY SECURITIES**

(a) An investment company offering securities covered under Section 18(b)(2) of the Securities Act of 1933 may satisfy the notice filing requirement of G.S. 78A-31(a) by filing the fees required by that section, together with Form NF, Uniform Investment Company Notice Filing. This filing need not be made nor fees paid on any security issued by an investment company if such security is exempt pursuant to the provisions of G.S. 78A-16 or 78A-17. If permitted by the



Securities Division, Form NF may be filed electronically.

(b) By filing Form NF, an investment company thereby agrees that, upon receipt of a request from the Securities Division, the investment company will promptly provide to the Division a copy of its current prospectus and statement of additional information, if any, as filed with the Securities and Exchange Commission.

(c) By executing the Form NF, the investment company thereby agrees, that for purposes of complying with the laws of this State, such execution shall be deemed to be the consent of the investment company to have the Administrator irrevocably appointed as its agent in this State upon whom may be served any notice, process or pleading in any action or proceeding against it arising out of, or in connection with, the sale of securities covered by such Form NF or arising out of the violation of the securities laws of this State; and that any action or proceeding against the investment company may be commenced in any court of competent jurisdiction and proper venue within this State by service of process upon the Administrator with the same effect as if the investment company was organized or created under the laws of this State and had been served lawfully with process in this State. In the event any notice, process or pleading is served on the investment company through the Administrator, the Administrator shall promptly provide a copy of such notice, process, or pleading to the person indicated in Item 5 of Form NF.

(d) Upon filing Form NF and paying either the minimum or maximum fees required by G.S. 78A-31(a)(1), the securities of the investment company may be offered for sale and sold into, from, and within this State until the expiration of the notice filing period pursuant to G.S. 78A-31(a)(4). In order to offer or sell its securities after the expiration of its notice filing, the investment company must extend its notice filing as provided in Paragraph (f) of this Rule. In the event that the Securities Division requests that the investment company provide it with a copy of the investment company's prospectus or statement of additional information, such request shall not restrict the ability of the investment company to offer its securities for sale in this State provided that the Division has received the Form NF and fees as required by G.S. 78A-31(a).

(e) Any investment company that elects to pay a fee less than the maximum fee as provided in G.S. 78A-31(a) shall file a sales report on Form NF, with the Division, within two months after the expiration of the notice filing period.

(f) A notice filing may be renewed by the investment company by filing a current Form NF and paying such fees as are required by G.S. 78A-31(a) within two months after the expiration of the prior notice filing period. Each renewal of a notice filing shall expire on December 31.

(g) Amendments to the information contained on a Form NF may be made by the filing of another Form NF, together with the fees required by G.S. 78A-31(a).

*History Note: Authority G.S. 78A-31(a); 78A-49(a);  
Temporary Adoption Eff. October 1, 1997.*

## SECTION .1300 - REGISTRATION OF SECURITIES

### .1304 SECURITIES REGISTRATION AND FILING FEES

(a) All fees (registration and filing) are payable to the Office of the Secretary of State and shall be submitted with the application for original, renewal, or additional registration. The registration fee shall be retained by the administrator, except where the registration is not granted by the administrator or where the registration is withdrawn at the request of the applicant and with the consent of the administrator. The filing fee shall be retained by the administrator in all cases.

(b) The aggregate offering amount of an original or amended registration may be increased prior to or after the effectiveness of the registration by providing the administrator the following:

- (1) An additional registration filing fee of fifty dollars (\$50.00) if such filing occurs after the effective date of the offering;
- (2) The appropriate registration fee calculated in the manner specified in G.S. 78A-28(b), provided the maximum registration fee has not been paid; and
- (3) An amendment to the Uniform Application to Register Securities (Form U-1).

Additional registrations shall be effective when the administrator so orders. The registration statement for a mutual fund or open-end management company may specify an indefinite aggregate offering amount if such offering amount is similarly registered with the Securities and Exchange Commission.

~~(c) A registration statement relating to securities issued or to be issued by a mutual fund, open-end management company, or unit investment trust, to be offered for a period in excess of one year, must be renewed annually by payment of a renewal fee of one hundred dollars (\$100.00) and by filing the following:~~

- ~~(1) A copy of the current prospectus and any other offering materials;~~
- ~~(2) One copy of any amendments to the registration statement not previously filed; and~~
- ~~(3) A statement of the amount of securities sold in this state to date and the balance of unsold securities effectively registered in this state, expressed in dollars.~~

The payment of the renewal fee and the filing of the listed documents and reports in this Rule shall be made no earlier than November 15th and, to assure timely renewal, should be made no later than December 15th. Renewal must be perfected prior to December 31 of each year and failure to timely renew will result in the expiration of the registration statement:

*History Note: Authority G.S. 78A-28(b); 78A-28(j);  
78A-49(a);  
Eff. April 1, 1981;*



*Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984; July 1, 1982;*

*Temporary Amendment Eff. October 1, 1997.*

## **SECTION .1400 - REGISTRATION OF DEALERS AND SALESMEN**

### **.1401 APPLICATION FOR REGISTRATION OF DEALERS**

(a) The application for registration as a dealer shall contain the following:

- (1) an executed Uniform Application for Registration as a Dealer (Form BD) and the appropriate schedules thereto or the appropriate successor form;
- (2) a fee in the amount of two hundred dollars (\$200.00);
- (3) evidence of current registration as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934;
- (4) ~~evidence of net capital as defined by Rule .1410(c) of this Section greater than one hundred thousand dollars (\$100,000) or evidence of compliance with Rule .1410 of this Section;~~
- (5) any other information the administrator may from time to time require.

(b) The application for registration as a dealer shall be filed as follows:

- (1) NASD member dealers shall file applications for initial registration in the State of North Carolina with the NASAA/NASD Central Registration Depository, P.O. Box 37441, Washington, D.C. 20013 and shall file a manually executed Form BD directly with the Securities Division. Applications for renewal of registration shall be filed only with the Central Registration Depository (see Rule .1406 of this Section);
- (2) Non-NASD member dealers shall file all applications for registration in the State of North Carolina directly with the Securities Division.

(c) The dealer shall file with the administrator, as soon as practicable but in no event later than thirty days, notice of any disciplinary action taken against the dealer by any exchange of which the dealer is a member; the Securities and Exchange Commission; the Commodity Futures Trading Commission; any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934 or any state securities commission and of any civil suit filed against the dealer alleging violation of any federal or state securities laws. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the dealer shall file a correcting amendment as soon as practicable but in no event later than thirty days.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon issuance of a license or written notice of effective

registration, unless proceedings are instituted pursuant to G.S. 78A-39. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) Every dealer shall notify the administrator of any change of address, the opening or closing of any office (including the office of any salesman operating apart from the dealer's premises) or any material change thereto, in writing as soon as practicable or by filing concurrently upon filing with NASD an appropriate amendment or schedule to Form BD or any successor form.

*History Note: Authority G.S. 78A-36(a); 78A-37(a); 78A-37(b); 78A-37(d); 78A-38(c); 78A-49(a);*

*Eff. April 1, 1981;*

*Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984; November 1, 1982;*

*Temporary Amendment Eff. October 1, 1997.*

### **.1410 MINIMUM FINANCIAL REQUIREMENTS FOR DEALERS**

(a) ~~A dealer, upon application for registration, must provide or a dealer who is currently registered may after December 31, 1984 be required to provide, evidence of net capital, as defined by Paragraph (c) of this Rule, not less than the appropriately prescribed amounts provided in this Paragraph or in lieu thereof a dealer may file a bond or provide evidence of a deposit of cash or securities in the appropriate amount provided as follows:~~

~~(1) Dealers organized under the laws of this State or having their principle office and substantial assets in this state shall maintain net capital of at least fifty thousand dollars (\$50,000), or net capital plus a surety bond or trust account totaling at least fifty thousand dollars (\$50,000).~~

~~(2) Dealers trading in municipal bonds only; dealers trading in Investment Company securities only; or dealers who do not generally carry customer's accounts as defined at Rule 15c3-1.(a)(2) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 as amended, shall maintain net capital of at least twenty-five thousand dollars (\$25,000), or net capital plus a surety bond or trust account totalling at least twenty-five thousand dollars (\$25,000).~~

~~(3) Dealers offering and selling direct participation programs only shall maintain net capital of at least fifty thousand dollars (\$50,000), or net capital plus a surety bond or trust account totalling at least fifty thousand dollars (\$50,000).~~

~~(4) All other dealers shall maintain net capital of seventy-five thousand dollars (\$75,000), or net capital plus a surety bond or trust account totalling at least seventy-five thousand dollars (\$75,000). Each dealer registered or required to be registered under this Act shall comply with SEC Rules 15c3-1, 15c3-2, and 15c3-3 (17 C.F.R. 240.15c3-1, 17~~

C.F.R. 240.15c3-2, and 17 C.F.R. 240.15c3-3, as amended from time to time.

(b) Except as provided by Paragraph (c) of this Rule, any ~~Any dealer registered on or after January 1, 1984 who fails to maintain the minimum net capital or net capital plus a surety bond or trust account requirement of Paragraph (a) of this Rule and any dealer registered before January 1, 1984 who fails to maintain the minimum net capital or net capital plus a surety bond or trust account requirement of Paragraph (a) after December 31, 1984 shall immediately suspend offers and sales of securities, notify the administrator within three business days of such fact, and shall not resume such operations until evidence has been submitted to and approved in writing by the administrator that the requirements of Paragraph (a) of this Rule have been met.~~

(c) Should a dealer's bond be terminated by the surety resulting in the dealer's failure to meet the requirements of Paragraph (a) of this Rule and the bond was not terminated due to fault of the dealer, then the dealer shall be provided a reasonable time period of up to six months, without the necessity of suspending offers and sales of securities, to obtain another bond in order to meet the requirements of Paragraph (a) of this Rule provided that the dealer notifies the administrator in writing within five business days of the termination of the bond and files such further information as the administrator may require regarding the financial status of the dealer until evidence of compliance with Paragraph (a) of this Rule is provided.

(d) If the net capital, or net capital plus a surety bond or trust account of a dealer, is less than one thousand dollars (\$1,000) above the requirements of Paragraph (a) of this Rule then such dealer shall notify the administrator within five business days and submit a copy of the dealer's current balance sheets. A copy of the dealer's current balance sheet shall be submitted each month thereafter until the dealer's net capital, or net capital plus a surety bond or trust account, exceeds one thousand dollars (\$1,000) over the minimum requirements of Paragraph (a) of this Rule.

(e) For the purposes of this Rule, "Net Capital" shall mean the excess of total assets over total liabilities as determined by generally accepted accounting principles, except that if any of such assets have been depreciated, then the amount of depreciation relative to any particular asset may be added to the depreciated cost of such assets to compute total assets; provided however, that the amount resulting after adding such depreciation does not exceed the fair market value of the asset. In the case of an individual, the assets on his balance sheet may be carried at estimated fair market value, with provisions for estimated income taxes on unrealized gain. For the purpose of calculating the appropriate amount of surety bond which may be required pursuant to this Rule, net capital may be presumed to be zero (\$0.00) in situations in which a dealer's liabilities exceed the dealer's assets.

(f) The surety bond shall be filed on the North Carolina Securities Administrator's Dealer Bond (NCDB Form) or on a form acceptable to the administrator. Evidence of a deposit of cash or securities shall be filed on the Certification of

Deposit of Cash or Securities (CDCS Form) or on a form acceptable to the administrator.

*History Note: Authority G.S. 78A-37(d); 78A-49(a);*

*Eff. April 1, 1981;*

*Amended Eff. October 1, 1988; January 1, 1984;*

*Temporary Amendment Eff. October 1, 1997.*

## **.1411 RECORD KEEPING REQUIREMENTS FOR DEALERS**

(a) ~~Every registered dealer shall keep the books and records set out in this Paragraph, unless otherwise designated by the administrator:~~

- ~~(1) blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. The record shall show the account for which each transaction was affected; the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered;~~
- ~~(2) ledgers (or other records) reflecting all assets and liabilities, income, and expense and capital accounts;~~
- ~~(3) ledger accounts itemizing separately as to each cash and margin account of every customer and of the dealer and partners thereof, all purchases, sales, receipts and deliveries of securities and commodities for the account and all other debits and credits to the account;~~
- ~~(4) ledgers (or other records) reflecting the following:  
(A) securities in transfer;  
(B) dividends and interest received;  
(C) securities borrowed and securities loaned;  
(D) monies borrowed and monies loaned (together with a record of the collateral thereof and any substitutions in the collateral); and  
(E) securities failed to receive and failed to deliver;~~
- ~~(5) a securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by the dealer for its account or for the account of its customers or partners and showing the location of all securities long and offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried;~~
- ~~(6) a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities whether executed or unexecuted. The memorandum shall show the~~



terms and conditions of the order or instructions and any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by the dealer, or any employee thereof, shall be so designated. The term "instruction" shall be deemed to include instructions between partners and employees of a dealer. The term "time of entry" shall be deemed to mean the time when such dealer transmits the order or instruction for execution, or, if it is not so transmitted, the time when it is received;

- (7) a memorandum of each purchase and sale of securities for the account of the dealer showing the price and to the extent feasible, the time of execution;
- (8) copies of confirmations of all purchases and sales and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of the dealer;
- (9) a record in respect of each cash and margin account with the dealer containing the name and address of the beneficial owner of the account; provided that in the case of a joint account or an account of a corporation, the records are required only in respect of the person or persons authorized to transact business for the account;
- (10) a record of all puts, calls, spreads, straddles and other options in which the dealer has any direct or indirect interest or which the dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved. This Section shall not be deemed to require a member of a national securities exchange to make or keep records of transactions cleared for the member by another member as are customarily made and kept by the clearing member.

(b) Every registered dealer shall preserve for a period of not less than three years, the first two years in a readily accessible location:

- (1) all check books, bank statements, cancelled checks and cash reconciliation;
- (2) all bills receivable or payable (or copies thereof), paid or unpaid relating to the business of the dealer;
- (3) originals of all communications received and copies of all communications sent by the dealer (including interoffice memoranda and communications) relating to the business of the dealer;
- (4) all trial balances, computation of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations and internal audit working papers, relating to the business of the dealer;
- (5) all guarantees of accounts and all powers of

attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolution empowering an agent to act on behalf of a corporation;

- (6) all written agreements (or copies thereof) entered into by a dealer relating to business of the dealer, including agreements with respect to any account. For a period of not less than three years after the closing of any customer's account, any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account shall be preserved by every registered dealer. Every registered dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership agreements, certificates or articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books. After a record or other documents has been preserved for two years, a photograph thereof on film may be substituted therefore for the balance of the required time.

(a) Unless otherwise provided by order of the Securities and Exchange Commission, each dealer registered or required to be registered under this Act shall make, maintain and preserve books and records in compliance with U.S. Securities and Exchange Commission Rules 17a-3, 17a-4, 15c2-6, and 15c2-11 (17 C.F.R. 240.17a-3, 17 C.F.R. 240.17a-4, 17 C.F.R. 240.15c2-6, and 17 C.F.R. 240.15c2-11), as amended from time to time.

(c)(b) Every registered dealer registered or required to be registered under this Act shall maintain within this State, in a readily accessible location, all records required by this Rule. A written request for the waiver of the provisions of this Section may be made to the administrator to permit any registered dealer to maintain any of the records required by this Section, in some place other than the State of North Carolina. In determining whether or not the provisions of this Section should be waived the administrator may consider, among other things, whether the main office of the dealer is in a place outside the State of North Carolina or whether the dealer clears all or some of its transactions and uses all or some of the bookkeeping facilities of some other dealer whose main office is outside the State of North Carolina.

*History Note: Authority G.S. 78A-38(a); 78A-38(b); 78A-38(d); 78A-49(a);*

*Eff. April 1, 1981;*

*Temporary Amendment Eff. October 1, 1997.*

#### .1412 FINANCIAL STATEMENTS

The administrator may require any dealer, either registered or making application, to file any and all financial statements which such dealer files with the Securities and Exchange Commission or any national securities exchange or national securities association of which it is a member. Each broker-dealer is required to furnish the administrator with a copy of



~~its audited financial statements 60 days after its fiscal year ends. Each dealer registered or required to be registered under this Act shall comply with SEC Rule 17a-11 (17 C.F.R. 240.17a-11), as amended from time to time, and shall file with the Administrator upon request copies of notices and reports required under SEC Rules 17a-5, 17a-10, and 17a-11 (17 C.F.R. 240.17a-5, 17 C.F.R. 240.17a-10, and 17 C.F.R. 240.17a-11), as amended from time to time.~~

*History Note: Authority G.S. 78A-38(b); 78A-49(c);*

*Eff. April 1, 1981;*

*Amended Eff. September 1, 1995;*

*Temporary Amendment Eff. October 1, 1997.*

## **SECTION .1500 - MISCELLANEOUS PROVISIONS**

### **.1506 PUBLIC INFORMATION**

~~Securities records shall be classified as public information except where:~~

- ~~(1) The administrator has determined that a claim or judicial action is in progress or a claim against or by the administrator may result in any judicial action or administrative proceeding;~~
- ~~(2) The administrator is conducting or has conducted a private investigation pursuant to G.S. 78A-46;~~
- ~~(3) The administrator has determined to conduct an administrative hearing privately pursuant to G.S. 78A-49(g); or~~
- ~~(4) A statute, rule or order otherwise provides.~~

*History Note: Authority G.S. 78A-46(a); 78A-49(a); 78A-49(g); 78A-50(c); 132-1.1; 78A-50;*

*Eff. April 1, 1981;*

*Amended Eff. January 1, 1984;*

*Temporary Repeal Eff. October 1, 1997.*

### **.1509 FORMS**

The following forms are available upon request from the Securities Division for use in complying with the provisions of Chapter 78A (the North Carolina Securities Act) of the North Carolina General Statutes and the rules promulgated thereunder:

- (1) Uniform Application to Register Securities (Form U-1);
- (2) Uniform Application for Registration As a Dealer (Form BD);
- (3) Supplement to Schedule F of Form BD;
- (4) Uniform Application for Securities and Commodities Industry Representative and/or Agent (Form U-4);
- (5) Uniform Termination Notice for Securities Industry Registration (Form U-5);
- (6) Uniform Consent to Service of Process (Form U-2);
- (7) Uniform Form of Corporate Resolution (Form U-2A);
- (8) North Carolina Securities Administrator's Dealer

Bond (Form NCDB);

- (9) Certification of Deposit of Cash or Securities (Form CDCS); and
- (10) Small Corporate Offerings Registration Form ~~(Form U-7); (Form U-7); and~~
- (11) Form NF, Uniform Investment Company Notice Filing.

*History Note: Authority G.S. 78A-49(a)(b);*

*Eff. April 1, 1981;*

*Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984;*

*Temporary Amendment Eff. October 1, 1997.*

## **SECTION .1700 - REGISTRATION OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES**

### **.1702 APPLICATION FOR INVESTMENT ADVISER REGISTRATION/NOTICE FILING FOR INVESTMENT ADVISER COVERED UNDER FEDERAL LAW**

(a) The application for initial registration as an investment adviser pursuant to Section 78C-17(a) of the Act shall be filed upon Form ADV (Uniform Application for Investment Adviser Registration) (17 C.F.R. 279.1) with the administrator. The initial application shall include the consent to service of process required by Section 78C-46(b) of the Act, and shall include the following:

- (1) A statement or certificate showing compliance by the investment adviser with the examination requirements of Rule .1709;
- (2) Such financial statements as set forth in Rule .1708, including at the time of application, a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than 45 days from the date of filing of the application, an unaudited balance sheet prepared as set forth in Rule .1708 as of a date within 45 days of the date of filing;
- (3) Evidence of compliance with the minimum financial requirements of Rule .1704;
- (4) A copy of the surety bond required by Section 78C-17(e), if applicable;
- (5) The fee required by Section 78C-17(b) of the Act; and
- (6) Any other information the administrator may from time to time require.

(b) The application for renewal of registration as an investment adviser shall be filed on ~~Form ADV-S (Annual Report for Investment Advisers Registered Under the Investment Advisers Act of 1940) (17 C.F.R. 279.3) and~~ amended Form ADV and shall contain the following:

- (1) A copy of the surety bond required by Rule .1705, if applicable; and
  - (2) The fee required by Section 78C-17(b) of the Act.
- (c) The investment adviser shall file with the

administrator, as soon as practicable but in no event later than 30 days, notice of any civil, criminal or administrative charges filed against the investment adviser which relate directly or indirectly to its activities in the securities or financial services business. This notice shall include notification of any investigation by any securities, commodities, or other financial services regulatory agency and any disciplinary, injunctive, restraining, or limiting action taken by such agencies, by any court of competent jurisdiction, or by any state administrator with respect to the investment adviser's activities in the securities or financial services business. Any amendment required by Section 78C-18(d) of the Act for an investment adviser shall be made on Form ADV in the manner prescribed by that form. Any amendment to Form ADV shall be filed with the administrator within the time period specified in the instructions to that form relating to filings made with the Securities and Exchange Commission.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon issuance of a license or written notice of effective registration, unless proceedings are instituted pursuant to G.S. 78C-19. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) Every investment adviser shall notify the administrator of any change of address, the opening or closing of any office (including the office of any investment adviser representative operating apart from the investment adviser's premises) or any material change thereto, in writing as soon as practicable.

(f) The registration of an investment adviser shall expire on December 31 of each year unless timely renewed. The application for renewal of registration should be filed at least 15 days before the expiration date.

(g) The notice filing for an investment adviser covered under federal law pursuant to G.S. 78C-17(a1) shall be filed with the Administrator or with a central registration depository designated by the Administrator on an executed Form ADV (Uniform Form for Investment Adviser Registration (17 C.F.R. 279.1)) and shall include:

- (1) a transmittal letter indicating that the Form ADV is being submitted by an investment adviser covered under federal law pursuant to G.S. 78C-17(a1); and
- (2) the fee required under G.S. 78C-17(b1).

(h) The renewal of the notice filing for a federal covered adviser pursuant to G.S. 78C-17(a1) shall be filed upon Schedule I of Form ADV, or another form designated by the Administrator, and shall include:

- (1) a transmittal letter indicating that the Form ADV is being filed by an investment adviser covered under federal law pursuant to G.S. 78C-17(a1); and
- (2) the fee required under G.S. 78C-17(b1).

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-16(b); 78C-16(d); 78C-17(a); 78C-17(a1); 78C-17(b); 78C-17(b1); 78C-17(e); 78C-18(d);*

*78C-19(a); 78C-30(a); 78C-30(b); 78C-30(c); 78C-30(d); 78C-46(b);*

*Eff. February 1, 1989;*

*Temporary Amendment Eff. October 1, 1997.*

### **.1703 APPLICATION/INVESTMENT ADVISER REPRESENTATIVE REGISTRATION**

(a) The application for initial registration as an investment adviser representative pursuant to Section 78C-17(a) of the Act shall be filed upon Form U-4 (Uniform Application for Securities Industry Registration or Transfer) with the administrator and contain the additional information required by this Rule. The initial application shall include the consent to service of process required by Section 78C-46(b) of the Act. The application for initial registration shall also provide the following:

- (1) A statement or certificate showing compliance by the investment adviser representative with the examination requirements of Rule .1709; and
- (2) The fee required by Section 78C-17(b) of the Act.

(b) The application for renewal of registration as an investment adviser representative shall, unless waived by the administrator, be filed with the administrator. No renewal of registration as an investment adviser representative shall be effected until the fee required by Section 78C-17(b) of the Act is remitted to the administrator.

(c) The investment adviser representative or the investment adviser for which the investment adviser representative is registered shall file with the administrator, as soon as practicable but in no event later than 30 days, notice of any civil, criminal, or administrative charges filed against the investment adviser representative which relate directly or indirectly to his activities in the securities or financial services business. This notice shall include notification of any investigation by any securities, commodities, or other financial services regulatory agency and any disciplinary, injunctive, restraining, or limiting action taken by such agencies, by any court of competent jurisdiction, or by any state administrator with respect to the investment adviser representative's activities in the securities or financial services business. Any amendment required by Section 78C-18(d) of the Act for an investment adviser representative shall be made on Form U-4 in the manner prescribed by that form. Such amended Form U-4 shall be filed with the administrator not later than 30 days following the event necessitating such amendment.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon approval of the application by the administrator, unless proceedings are instituted pursuant to G.S. 78C-19. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) The registration of any investment adviser representative shall expire on December 31 of each year unless renewed in a timely fashion. The application for renewal of registration should be filed at least 15 days before



the expiration date. The application for renewal of registration of investment adviser representatives shall be submitted by the investment adviser or investment adviser covered under federal law, who shall file with the Securities Division a listing of all investment adviser representatives to be renewed along with their current addresses and social security numbers. The investment advisers adviser representative renewal list shall be submitted in alphabetical order as follows: last name, first name, middle name or maiden name; current address; social security number. A fee of forty-five dollars (\$45.00) for each investment adviser representative made payable to the North Carolina Secretary of State shall be submitted along with the investment adviser representative renewal list.

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-16(b); 78C-17(a); 78C-17(b); 78C-18(d); 78C-19(a); 78C-30(a); 78C-30(b); 78C-46(b); Eff. February 1, 1989; Temporary Amendment Eff. October 1, 1997.*

#### **.1704 MINIMUM FINANCIAL REQUIREMENTS FOR INVESTMENT ADVISERS**

(a) Unless an investment adviser posts a bond pursuant to Rule .1705, an investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of thirty-five thousand dollars (\$35,000.00), and every investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of ten thousand dollars (\$10,000.00).

(b) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under the Act shall by the close of business on the next business day notify the administrator if such investment adviser's total net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a written report with the administrator of its financial condition, including the following:

- (1) A trial balance of all ledger accounts;
- (2) A statement of all client funds or securities which are not segregated;
- (3) A computation of the aggregate amount of client ledger debit balances; and
- (4) A statement as to the number of client accounts.

(c) For purposes of this Rule, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, subordinated loans, goodwill, franchise rights, organizational expenses, patents,

copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(d) The administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

(e) Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-17(d); 78C-18(c); 78C-18(d); 78C-30(a); Eff. February 1, 1989; Amended Eff. September 1, 1995; Temporary Amendment Eff. October 1, 1997.*

#### **.1705 BONDING REQUIREMENTS FOR CERTAIN INVESTMENT ADVISERS**

(a) Every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded in an amount of not less than thirty-five thousand dollars (\$35,000.00) by a bonding company qualified to do business in this state or in lieu thereof may provide evidence of a deposit of cash or securities in such amount. The requirements of this Rule shall not apply to those applicants or registrants who comply with the requirements of Rule .1704.

(b) Should an investment adviser's bond be terminated by the surety resulting in the investment adviser's failure to meet the requirements of Paragraph (a) of this Rule and the bond was not terminated due to fault of the investment adviser, then the investment adviser shall be provided a reasonable time period up to six months, without the necessity of ceasing to do business as an investment adviser, to obtain another bond in order to meet the requirements of Paragraph (a) of this Rule provided that the investment adviser notifies the administrator in writing within two business days of the termination of the bond and files such further information as the administrator may require regarding the financial status of the investment adviser until evidence of compliance with Paragraph (a) of this Rule is provided.

(c) The surety bond shall be filed with the administrator on Form NCIAB (North Carolina Securities Division Investment Adviser's Bond) or on a form acceptable to the administrator. Evidence of a deposit of cash or securities shall be filed with the administrator on Form CDCS-IA (Certification of Deposit of Cash or Securities -- Investment Advisers) or on a form acceptable to the administrator.

(d) An investment adviser that has its principal place of business in a state other than this state shall be exempt from



the requirements of Paragraph (a) of this Rule, provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-17(d); 78C-18(b); 78C-18(c); 78C-30(a); Eff. February 1, 1989;*

*Temporary Amendment Eff. October 1, 1997.*

## **.1706 RECORD-KEEPING REQUIREMENTS FOR INVESTMENT ADVISERS**

(a) Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

- (1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;
- (3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;
- (4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser;
- (5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such;
- (6) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser;
- (7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:
  - (A) Any recommendation made or proposed to be made and any advice given or proposed to be given,
  - (B) Any receipt, disbursement or delivery of funds or securities, or

(C) The placing or execution of any order to purchase or sell any security; provided, however,

- (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and
- (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof;

- (8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;
- (9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof;
- (10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such;
- (11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to ten or more persons (other than clients receiving investment supervisory services or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons thereof;
- (12) The following records:
  - (A) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:
    - (i) Transactions effected in any account

over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

- (ii) Transactions in securities which are direct obligations of the United States.

Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

- (B) For purposes of this Subparagraph (12), the term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his duties (other than clerical, ministerial or administrative duties), obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:
  - (i) any person in a control relationship to the investment adviser,
  - (ii) any affiliated person of such controlling person, and
  - (iii) any affiliated person of such affiliated person.

"Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

- (C) An investment adviser shall not be deemed to have violated the provisions of this Subparagraph (12) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly

- (13) Reports of all transactions required to be recorded; Records required of investment advisers primarily engaged in other businesses:

- (A) Notwithstanding the provisions of Subparagraph (12) in this Rule, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:
  - (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
  - (ii) Transactions in securities which are direct obligations of the United States.

Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

- (B) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its three most recent fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of:
  - (i) its total sales and revenues, and
  - (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

- (C) For purposes of this Subparagraph (13), the term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, shall mean any partner, officer, director or employee of the investment adviser who makes any recommendation, who participates



in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made, or who, in connection with his duties (other than clerical, ministerial or administrative duties), obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:

- (i) any person in a control relationship to the investment adviser,
- (ii) any affiliated person of such controlling person, and
- (iii) any affiliated person of such affiliated person.

"Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

(D) An investment adviser shall not be deemed to have violated the provisions of this Subparagraph (13) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded; and

- (14) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Rule .1707, and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(b) If an investment adviser subject to Paragraph (a) of this Rule has custody or possession of securities or funds of any client, the records required to be made and kept under Paragraph (a) of this Rule shall also include:

- (1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts;
- (2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;

- (3) Copies of confirmations of all transactions effected by or for the account of any such client; and
- (4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the locations of each such security.

(c) Every investment adviser subject to Paragraph (a) of this Rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

- (1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale; and
- (2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.

(d) Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) Duration requirement for maintenance of records:

- (1) All books and records required to be made under the provisions of Paragraphs (a) to (c)(1), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.
- (2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(f) An investment adviser subject to Paragraph (a) of this Rule, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the administrator in writing of the exact address where such books and records will be maintained during such period.

(g) Preservation and maintenance of records:

- (1) The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in Subparagraph (g)(2) of this Rule, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the



required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

- (A) arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;
- (B) be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the administrator by its examiners or other representatives may request;
- (C) store separately from the original one other copy of the film or computer storage medium for the time required;
- (D) with respect to records stored on a computer storage medium, maintain procedures for maintenance and preservations of, and access to, records from loss, alteration, or destruction; and
- (E) with respect to records stored on photographic film, at all times have available for the administrator's examination of its records pursuant to Section 78C-18(e) of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

- (2) Pursuant to Subparagraph (g)(1) of this Rule an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h) For purposes of this Rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(i) Every registered investment adviser shall maintain within this state, in a readily accessible location, all records required by this Rule. A written request for the waiver of the provisions of this Section may be made to the administrator to permit any registered investment adviser to maintain any of the records required by this Rule in some place other than the State of North Carolina. In determining whether or not the provisions of this Rule should be waived, the administrator may consider, among other things, whether the main office of the investment adviser is in a place outside the State of North Carolina or whether the investment adviser uses all or some of the bookkeeping facilities of some other investment adviser whose main office is outside the State of North Carolina.

(j) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-18(a); 78C-18(b); 78C-18(e); 78C-30(a); Eff. February 1, 1989; Temporary Amendment Eff. October 1, 1997.*

#### **.1712 CHANGE OF NAME OF INVESTMENT ADVISER**

Where only a change in the name of the investment adviser applicant or registrant occurs, an amended Form ADV ~~or ADV-S~~ shall be filed with the administrator together with any amendments to the organizational documents, or accompanying letters of explanation, within 30 days of the date of the change. The investment adviser shall return its license and a new license will be issued reflecting the name change. There will be no fee for reissuance of the license. Each investment adviser representative shall retain his investment adviser representative's license and this license shall suffice as evidence of licensing under the new investment adviser name until renewal.

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-17(c); 78C-18(d); 78C-30(a); 78C-30(b); Eff. February 1, 1989; Temporary Amendment Eff. October 1, 1997.*

#### **.1713 INVEST ADVISER MERGER/ CONSOLIDATION/ACQUISITION/ SUCCESSION**

(a) When there is a merger, consolidation, acquisition, succession, or other similar fundamental change in the ownership of a registered investment adviser, the surviving or new entity shall file with the administrator, prior to such fundamental change, an amended Form ADV ~~or ADV-S~~ or successor form, with the plan of fundamental change and a letter or any documents of explanation including the date of mass transfer of investment adviser representatives pursuant to Paragraph (c) of this Rule if contemplated. As soon as practicable, but not later than 30 days after the fundamental change, the surviving or new entity shall file with the administrator the current financial statements of the surviving or new entity; the amended or new charter and by-laws; and, if applicable, a copy of the certificate of merger, consolidation or other fundamental change.

(b) The registration of the surviving or new entity shall be granted by the administrator on the same date that the fundamental change becomes effective. Where the fundamental change results in a change in the name of the surviving or new entity from the name listed on any outstanding investment adviser's license, the license shall be returned and a new license reflecting the new name will be issued. There will be no fee for reissuance of a license.

(c) Investment advisers shall effect mass transfers of investment adviser representatives by filing with the Securities Division a Form U-4 or successor form for each

investment adviser representative to be transferred from the nonsurviving entity to the surviving or new entity and a Form U-5 or successor form for each investment adviser representative not to be transferred. Each transferred investment adviser representative shall retain his investment adviser representative's license which shall suffice as evidence of registration with the surviving or new entity until renewal. The transfer of the investment adviser representative is effective upon receipt of the Form U-4 or successor form by the Securities Division. All Form U-5's or successor forms shall be filed as soon as practicable but no later than 10 business days after the fundamental change. A regular application fee shall be paid by the surviving or new investment adviser for each investment adviser representative in such transfer.

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-16(b); 78C-17(a); 78C-17(c); 78C-18(b); 78C-18(c); 78C-18(d); 78C-30(a); 78C-30(b);*

*Eff. February 1, 1989;*

*Amended Eff. September 1, 1995;*

*Temporary Amendment Eff. October 1, 1997.*

#### **.1714 REGISTRATION OF PARTNERS/ EXECUTIVE OFFICERS/DIRECTORS**

(a) Any partner, executive officer, director, or a person occupying a similar status or performing similar functions who represents a registered investment adviser in transacting business in this state as an investment adviser shall be registered as an investment adviser representative pursuant to Paragraph (b) of this Rule.

(b) Automatic investment adviser representative registration for partners, executive officers or directors of a registered investment adviser or a person occupying a similar status or performing similar functions shall be obtained by filing an original or amended Form ADV ~~or ADV-S~~ and any appropriate schedule thereto, providing the required disclosures regarding the registrant, and a written notice to the Securities Division identifying the registrant and that the registrant will engage in the activities as described in Paragraph (a) of this Rule; provided, however, if such information is currently on file with the administrator then the written notice only is required to be filed. Automatic registration shall lapse where a material change in the information reported on Form ADV ~~or ADV-S~~ or any schedule thereto regarding the registrant has occurred and has not been reported to the Securities Division by filing an original or amended Form ADV ~~or ADV-S~~ or the appropriate schedule therewith current information within ten business days of the material change. The investment adviser shall timely inform the Securities Division in writing when any registrant under this Paragraph ceases to engage in the activities described in Paragraph (a) of this Rule for the purposes of termination of the automatic investment adviser representative registration. Annual renewal is automatic upon renewal of the investment adviser registration.

(c) Failure to maintain a current automatic registration pursuant to Paragraph (b) of this Rule for those persons described in Paragraph (a) of this Rule may result in violation of G.S. 78C-16.

(d) Automatic registration may be denied, revoked, suspended, restricted or limited or the registrant censured as provided by G.S. 78C-19. Nothing in this Rule shall limit the administrator's authority to institute administrative proceedings against an investment adviser, or an applicant for investment adviser registration due to the qualifications of or disclosures regarding a person described in Paragraph (a) of this Rule.

(e) An investment adviser representative shall not be registered with more than one investment adviser regardless of whether registration is accomplished or contemplated under this Rule or Rule .1703 of this Section unless each of the investment advisers which employs or associates the investment adviser representative is under common ownership or control.

(f) For the purposes of this Rule, "Executive Officer" shall mean the chief executive officer, the president, the principal financial officer, each vice president with responsibility involving policy making functions for a significant aspect of the investment adviser's business, the secretary, the treasurer, or any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-16(a); 78C-16(b); 78C-17(a); 78C-18(b); 78C-18(d); 78C-19(a); 78C-30(a); 78C-30(b);*

*Eff. February 1, 1989;*

*Temporary Amendment Eff. October 1, 1997.*

#### **SECTION .1800 - MISCELLANEOUS PROVISIONS - INVESTMENT ADVISERS**

##### **.1801 DISHONEST OR UNETHICAL PRACTICES**

(a) An investment adviser or an investment adviser covered under federal law is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection apply to investment advisers covered under federal law to the extent that the conduct alleged is fraudulent or deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of his duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser or an investment adviser covered under federal law shall not engage in unethical business practices, including the following:

- (1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after



- reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser after reasonable examination of such of the client's financial records as may be provided to the investment adviser;
- (2) Placing an order to purchase or sell a security for the account of a client without authority to do so;
  - (3) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;
  - (4) Exercising any discretionary authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority. Discretionary power does not include a power relating solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;
  - (5) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;
  - (6) Borrowing money or securities from a client unless the client is a dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of lending funds or securities;
  - (7) Lending money to a client unless the investment adviser is a financial institution engaged in the business of lending funds or a dealer, or unless the client is an affiliate of the investment adviser;
  - (8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;
  - (9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation in which the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.);
  - (10) Charging a client an advisory fee that is unreasonable in the light of the type of services to be provided, the experience and expertise of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources;
- (11) Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:
    - (A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and
    - (B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;
  - (12) Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the advice which will be rendered;
  - (13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940;
  - (14) Disclosing the identity, affairs or investments of any client to any third party unless required by law to do so, or unless consented to by the client;
  - (15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the safekeeping requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940, unless the investment adviser is exempt from such requirements by virtue of Rule 206(4)-2(b);
  - (16) Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance: the services to be provided; the term of the contract; the advisory fee or the formula for computing the fee; the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance; whether the contract grants discretionary authority to the adviser; and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;
  - (17) Failing to disclose to any client or prospective client all material facts with respect to:
    - (A) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to

clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than five hundred dollars (\$500.00) from such client, six months or more in advance; or

- (B) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients; and
- (18) Utilizing an agent or subagent who satisfies the definition of an investment adviser representative as set forth in G.S. 78C-2(3), where such agent or subagent is not registered as an investment adviser representative pursuant to G.S. 78C-16;
- (19) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940;
- (20) Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940;
- (21) To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this Act or of the Investment Advisers Act of 1940, or any other practice that would violate Section 215 of the Investment Advisers Act of 1940;
- (22) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of Section 206(4) of the Investment Advisers Act of 1940;
- (23) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this Act or any rule or regulation thereunder.

The conduct set forth in Rule .1801(a) is not exclusive. It also includes employing any device, scheme, or artifice to defraud or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit. The federal statutory and regulatory provisions referenced herein shall apply both to investment advisers and to investment advisers covered under federal law, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

(b) There shall be a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of Subparagraph (a)(17)(B) of this Rule for a period of 10 years from the time of the event:

- (1) A criminal or civil action in a court of competent

jurisdiction in which the person:

- (A) was convicted, pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business, fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;
- (B) was found to have been involved in a violation of an investment-related statute or regulation; or
- (C) was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity;
- (2) Administrative proceedings before the Administrator, Securities and Exchange Commission, any other federal regulatory agency or any other state agency (any of the foregoing being referred to hereafter as "agency") in which the person:
  - (A) was found to have caused an investment-related business to lose its authorization to do business;
  - (B) was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business or otherwise significantly limiting the person's investment-related activities; or
  - (C) was found to have engaged in an act or a course of conduct which resulted in the issuance by the agency of an order to cease and desist the violation of the provisions of any investment-related statute or rule; or
- (3) Self-Regulatory Organization (SRO) proceedings in which the person:
  - (A) was found to have caused an investment-related business to lose its authorization to do business; or
  - (B) was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than two thousand five hundred dollars (\$2,500.00); or otherwise significantly limiting the person's investment-related activities.



(c) The information required to be disclosed by Subparagraph (a)(17) shall be disclosed to clients promptly, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

(d) For purposes of this Rule:

- (1) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser which is not a natural person or to determine the general investment advice given to clients;
- (2) "Found" means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action;
- (3) "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate [including, but not limited to, acting as or being associated with a dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or fiduciary];
- (4) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act; and
- (5) "Self-Regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.

(e) For purposes of calculating the ten-year period during which events are presumed to be material under Paragraph (b), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(f) Compliance with this Rule shall not relieve any investment adviser from the obligations of any other disclosure requirement under the Act, the rules and regulations thereunder, or under any other federal or state law.

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-18(b); 78C-30(a); Eff. February 1, 1989; Amended Eff. September 1, 1995; Temporary Amendment Eff. October 1, 1997.*

## **.1802 CUSTODY/CLIENT FUNDS OR SECURITIES BY INVESTMENT ADVISERS**

(a) It shall be unlawful for any investment adviser to take

or have custody of any securities or funds of any client unless:

- (1) the investment adviser notifies the administrator in writing that the investment adviser has or may have custody. Such notification may be given on Form ADV;
- (2) the securities of each client are segregated;
- (3) the following conditions are satisfied:
  - (A) all client funds are deposited in one or more bank accounts containing only clients' funds,
  - (B) such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and
  - (C) the investment adviser maintains a separate record for each such account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;
- (4) immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice thereof to the client;
- (5) at least once every three months, the investment adviser sends each such client an itemized statement showing the funds and securities in the investment adviser's custody at the end of such period and all debits, credits and transactions in the client's account during such period; and
- (6) at least once every calendar year, an independent certified public accountant verifies all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that such accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the administrator within 30 days after each such examination.

(b) This Rule shall not apply to an investment adviser also registered as a broker-dealer under Section 15 of the Securities Exchange Act of 1934 if the broker-dealer is:

- (1) Subject to and in compliance with SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers), 17 C.F.R. 240.15c3-1 under the Securities Exchange Act of 1934, or
- (2) A member of an exchange whose members are exempt from SEC Rule 15c3-1, 17 C.F.R. 240.15c3-1 under the provisions of Paragraph (b)(2) thereof, and the broker-dealer is in compliance with all rules and settled practices of

the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the accounts of customers.

(c) For purposes of this Rule, the term "investment adviser" shall include an investment adviser covered under federal law as defined in G.S. 78C-2(4).

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989;*

*Authority G.S. 78C-18(a); 78C-18(b); 78C-30(a);*

*Eff. February 1, 1989;*

*Temporary Amendment Eff. October 1, 1997.*

### **.1803 AGENCY CROSS TRANSACTIONS**

(a) For purposes of this Rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a dealer in this state unless excluded from the definition of "dealer" in N.C. Gen. Stat. Section 78A-2(2).

(b) An investment adviser effecting an agency cross transaction for an advisory client shall be in compliance with Section 78C-8(a)(3) of the Act if the following conditions are met:

- (1) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;
- (2) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;
- (3) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this Rule sends the client a written confirmation. The written confirmation shall include:
  - (A) a statement of the nature of the transaction,
  - (B) the date the transaction took place,
  - (C) an offer to furnish, upon request, the time when the transaction took place, and
  - (D) the source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction.

In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser

has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

- (4) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this Rule sends the client a written disclosure statement identifying:
  - (A) the total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and
  - (B) the total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period;

- (5) Each written disclosure and confirmation required by this Rule must include a conspicuous statement that the client may revoke the written consent required under Subparagraph (b)(1) of this Rule at any time by providing written notice to the investment adviser; and
- (6) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(c) Nothing in this Rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser representative of any other disclosure obligations imposed by the Act.

(d) For purposes of this Rule, the term "investment adviser" shall include an investment adviser covered under federal law as defined in G.S. 78C-2(4).

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989;*

*Authority G.S. 78C-8(a); 78C-8(f); 78C-18(b); 78C-30(a);*

*Eff. February 1, 1989;*

*Temporary Amendment Eff. October 1, 1997.*

### **.1804 EXEMPTION/SECTION 78C-8(a)(3)/CERTAIN BROKER-DEALERS**

(a) For purposes of this Rule:

- (1) "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials; ~~and~~
- (2) "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those ~~statements;~~ statements; and
- (3) "investment adviser" shall include an investment adviser covered under federal law as defined in G.S. 78C-2(4).



(b) An investment adviser registered as a broker-dealer pursuant to Section 15 of the Securities Exchange Act of 1934 shall be exempt from Section 78C-8(a)(3) of the Act in connection with any transaction in relation to which that broker-dealer acts as an investment adviser:

- (1) solely by means of publicly distributed written materials or publicly made oral statements;
- (2) solely by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;
- (3) solely through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or
- (4) any combination of the foregoing services.

This exemption shall apply only if the materials and oral statements disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the Act.

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-8(f); 78C-30(a); Eff. February 1, 1989;*

*Temporary Amendment Eff. October 1, 1997.*

#### **.1805 PERFORMANCE-BASED COMPENSATION EXEMPTION**

(a) For purposes of this Rule:

- (1) "Affiliate" shall have the same definition as in Section 2(a)(3) of the federal Investment Company Act of 1940;
- (2) "Client's independent agent" means any person who agrees to act as an investment advisory client's agent in connection with an advisory contract, but does not include:
  - (A) The investment adviser relying on this Rule;
  - (B) An affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative;
  - (C) An interested person of the investment adviser;
  - (D) A person who receives, directly or indirectly, any compensation in connection with the advisory contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser; or
  - (E) A person with any material relationship between himself (or an affiliated person of

that person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the past two years;

- (3) "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under Title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. "Company" shall not include:
  - (A) A company required to be registered under the federal Investment Company Act of 1940 but which is not so registered;
  - (B) A private investment company (for purposes of this Subparagraph (B), a private investment company is a company which would be defined as an investment company under Section 3(a) of the federal Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act);
  - (C) An investment company registered under the federal Investment Company Act of 1940; or
  - (D) A business development company as defined in Section 202(a)(22) of the federal Investment Company Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or company within the meaning of Subparagraph (a)(3) of this Rule; **and**
- (4) "Interested person" means:
  - (A) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;
  - (B) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:
    - (i) one tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or
    - (ii) five percent of the total assets of the person seeking to act as the client's independent agent; or
  - (C) Any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment ~~adviser~~ **adviser; and**
- (5) "Investment adviser" shall include an investment adviser covered under federal law as defined in

G.S. 78C-2(4).

(b) Notwithstanding Section 78C-8(c)(1) of the Act, an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in Subparagraphs (c) through (h) of this Rule are met.

(c) The client entering into the contract must be:

- (1) A natural person or a company who, immediately after entering into the advisory contract has at least five hundred thousand dollars (\$500,000.00) under the management of the investment adviser; or
- (2) A person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds one million dollars (\$1,000,000.00).

For purposes of this Rule, the term "net worth" shall have the same meaning as that provided by Rule .1313(b)(2). The net worth of a natural person may include assets held jointly with that person's spouse.

(d) The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

- (1) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), 17 C.F.R. 270.2a-4(a)(1), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;
- (2) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1), the formula must include:
  - (A) the realized capital losses of securities over the period; and
  - (B) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and
- (3) The formula must provide that any compensation paid to the investment adviser under this Rule is based on the gains less the losses (computed in accordance with Subparagraphs (1) and (2) of this Paragraph) in the client's account for a period of not less than one year.

(e) Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the

proposed advisory arrangement, including the following:

- (1) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;
- (2) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;
- (3) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;
- (4) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and
- (5) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.

(f) The investment adviser (and any investment adviser representative) who enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client (or in the case of a client which is a company as defined in Subparagraph (a)(3) of this Rule, the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in Subparagraph (a)(2) of this Rule.

(g) Any person entering into or performing an investment advisory contract under this Rule is not relieved of any obligations under Section 78C-8(a) or any other applicable provision of the Act or any rule or order thereunder.

(h) Nothing in this Rule shall relieve a client's independent agent from any obligation to the client under applicable law.

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-8(b); 78C-8(c)(i); 78C-8(f); 78C-30(a); Eff. February 1, 1989; Temporary Amendment Eff. October 1, 1997.*

**.1806 TRANSACTIONS DEEMED NOT TO BE ASSIGNMENTS**

For purposes of Section 78C-8(c)(2) of the Act, a transaction which does not result in a change of actual control or management of an investment adviser or investment



adviser covered under federal law is not an assignment.

Advisers Only).

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-8(c)(2); 78C-8(f); 78C-30(a); Eff. February 1, 1989; Temporary Amendment Eff. October 1, 1997.*

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-30(a); 78C-30(b); Eff. February 1, 1989; Amended Eff. September 1, 1990; Temporary Amendment Eff. October 1, 1997.*

#### **.1809 PUBLIC INFORMATION**

~~Investment adviser records filed with the administrator shall be classified as public information except where:~~

- ~~(1) The administrator has determined that a claim or judicial action is in progress or a claim against or by the administrator may result in any judicial action or administrative proceeding;~~
- ~~(2) The administrator is conducting or has conducted a private investigation pursuant to G.S. 78C-27;~~
- ~~(3) The administrator has determined to conduct an administrative hearing privately pursuant to G.S. 78C-30(g); or~~
- ~~(4) A statute, rule or order otherwise provides.~~

*History Note: Filed as a Temporary Rule Eff. January 2, 1989, for a Period of 180 Days to Expire on June 30, 1989; Authority G.S. 78C-27(a); 78C-30(a); 78C-30(g); 78C-31(c); 132-1; 132-1.1; Eff. February 1, 1989; Temporary Repealed Eff. October 1, 1997.*

#### **.1811 FORMS**

For use in compliance with the requirements of the provisions of Chapter 78C of the North Carolina General Statutes and the rules promulgated thereunder, the following forms are available upon request from the Securities Division:

- (1) Uniform Application for Investment Adviser Registration (Form ADV);
- ~~(2) Annual Report for Investment Advisers Registered Under the Investment Advisers Act of 1940 (Form ADV-S);~~
- ~~(3)~~(2) Uniform Consent to Service of Process (Form U-2);
- ~~(4)~~(3) Uniform Form of Corporate Resolution (Form U-2A);
- ~~(5)~~(4) Uniform Application for Securities Industry Registration or Transfer (Form U-4);
- ~~(6)~~(5) Uniform Termination Notice for Securities Industry Registration (Form U-5);
- ~~(7)~~(6) North Carolina Securities Division Investment Adviser's Bond (Form NCIAB);
- ~~(8)~~(7) Certification of Deposit of Cash or Securities -- Investment Advisers (Form CDCS-IA);
- ~~(9)~~(8) Consent To Service of Process (For Use By Investment Advisers and Investment Adviser Representatives Only);
- ~~(10)~~(9) Consent To Service of Process (For Use By Investment Adviser Representatives Only); and
- ~~(11)~~(10) Corporate Resolution (For Use By Investment

## **TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

### **CHAPTER 34 - BOARD OF MORTUARY SCIENCE**

**Rule-making Agency:** *Board of Mortuary Science*

**Rule Citation:** *21 NCAC 34A .0201*

**Effective Date:** *October 1, 1997*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rule-making:** *G.S. 90-210.23(a); 90-210.28; 90-210.43(g); 90-210.48; 90-210.67(b), (c), (d), (d1); 90-210.68(a)*

**Reason for Proposed Action:** *To set licensing fees and penalties within limits established by State Statute.*

**Comment Procedures:** *Interested persons may present statements in writing by mail addressed to the North Carolina Board of Mortuary Science, PO Box 27368, Raleigh, NC 27611-7368.*

### **SUBCHAPTER 34A - BOARD FUNCTIONS**

#### **SECTION .0200 - FEES AND OTHER PAYMENTS**

##### **.0201 FEES AND PENALTIES**

- (a) Fees for funeral service shall be as follows:
- |   |          |
|---|----------|
| Establishment permit                        |          |
| Application                                 | \$250.00 |
| Annual renewal                              | \$150.00 |
| Late renewal penalty                        | \$100.00 |
| Establishment and embalming facility        |          |
| reinspection fee                            | \$100.00 |
| Courtesy card                               |          |
| Application                                 | \$ 75.00 |
| Annual renewal                              | \$ 50.00 |
| Out-of-state licensee                       |          |
| Application                                 | \$200.00 |
| Embalmer, funeral director, funeral service |          |
| Application, North Carolina resident        | \$150.00 |
| Application, non-resident                   | \$200.00 |
| Annual renewal                              |          |
| Embalmer                                    | \$ 40.00 |

**CHAPTER 40 - BOARD OF OPTICIANS**

**Rule-making Agency:** *State Board of Opticians*

**Rule Citation:** *21 NCAC 40 .0108*

**Effective Date:** *November 1, 1997*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rule-making:** *G.S. 90-246; 90-249(a)(9)*

**Reason for Proposed Action:** *To set licensing fees within limits established by State statute.*

**Comment Procedures:** *Interested persons may present statements in writing by mail addressed to the State Board of Opticians, PO Box 25336, Raleigh, NC 27611-5336.*

**SECTION .0100 - LOCATION**

**.0108 FEES**

~~The Board charges the maximum fees allowed by G.S. 90-246.~~

Fees charged by the Board shall be as follows:

<u>Each examination</u>	<u>\$150.00</u>
<u>Each initial license</u>	<u>\$ 40.00</u>
<u>Each renewal of license</u>	<u>\$ 75.00</u>
<u>Each license issued to a practitioner of another state to practice in this state</u>	<u>\$175.00</u>
<u>Each registration of an optical place of business</u>	<u>\$ 35.00</u>
<u>Each application for registration as an opticianry apprentice or intern, and renewals thereof</u>	<u>\$ 25.00</u>
<u>Each registration of a training establishment</u>	<u>\$ 25.00</u>
<u>Each license verification requiring file search</u>	<u>\$ 10.00</u>

*History Note: Authority G.S. 90-246; 90-249(a)(9); Eff. November 1, 1981; Amended Eff. February 1, 1989; February 1, 1988; August 1, 1985; Temporary Amendment Eff. November 1, 1997.*

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**CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS**

**Rule-making Agency:** *State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors*

**Rule Citation:** *21 NCAC 50 .0301, .0306, .0404, .0506, .0511, .1102*

Funeral director	\$ 40.00
Total fee, embalmer and funeral director, when both are held by same person	\$ 60.00
Funeral service	\$ 60.00
Reinstatement fee	\$ 50.00
Resident trainee permit	
Application	\$ 50.00
Annual renewal	\$ 35.00
Late renewal penalty	\$ 25.00
Duplicate license certificate	\$ 25.00
Chapel registration	
Application	\$150.00
Annual renewal	\$100.00

(b) Fees for crematories shall be as follows:

License	
Application	\$400.00
Annual renewal	\$150.00
Late renewal penalty	\$ 75.00
Crematory reinspection fee	\$100.00
Per-cremation fee	\$ 5.00
<u>Late filing or payment penalty for each cremation</u>	<u>\$ 10.00</u>
<u>Late filing penalty for cremation report, per month</u>	<u>\$ 75.00</u>

(c) Fees for preneed funeral contract regulation shall be as follows:

Preneed funeral establishment license	
Application	\$100.00
Annual renewal	\$100.00
Late renewal penalty	\$100.00
Preneed sales license	
Application	\$ 10.00
Annual renewal	\$ 10.00
Late renewal penalty	\$ 25.00
Preneed licensee reinspection fee	\$100.00
Preneed contract filings	
Filing fee for each contract	\$ 18.00
Late filing or payment penalty for each contract	\$ 25.00
Late filing penalty for each certificate of performance	\$ 25.00
Late filing penalty for annual report	\$150.00

*History Note: Authority G.S. 90-210.23(a); 90-210.28; 90-210.43(g); 90-210.48; 90-210.67(b), (c), (d), (d1); 90-210.68(a);*

*Eff. September 1, 1979;*

*Amended Eff. January 1, 1991; July 1, 1988; January 1, 1988; October 1, 1983;*

*Recodified from 21 NCAC 34 .0123 Eff. February 7, 1991;*

*Amended Eff. December 1, 1993; August 2, 1993; May 1, 1993; July 1, 1991;*

*Temporary Amendment Eff. October 1, 1997.*

\*\*\*\*\*



**Effective Date:** *September 15, 1997*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rule-making:** *G.S. 87-18; 87-21(a); 87-21(b)*

**Reason for Proposed Action:** *SB 996 and HB 408 Ratified by the North Carolina General Assembly to include the licensing of fuel piping contractors within the scope of this agency with licenses to be issued April 1, 1998, after examination.*

**Comment Procedures:** *Hearing on the permanent rules is scheduled for November 19, 1997, at 8:30 a.m. at the offices of the Board at 3801 Wake Forest Rd., Suite 201, Raleigh, NC. Written comment on the permanent rules will be received up to January 1, 1998.*

## SECTION .0300 - EXAMINATIONS

### .0301 QUALIFICATIONS DETERMINED BY EXAMINATION

(a) In order to determine the qualifications of an applicant, the Board shall provide a written examination in the following categories:

- Plumbing Contracting, Class I
- Plumbing Contracting, Class II
- Heating, Group No. 1 - Contracting, Class I
- Heating, Group No. 1 - Contracting, Class II
- Heating, Group No. 2 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class II
- Fuel Piping

(b) Each applicant shall be required to read, interpret and provide written answers to all parts of the examinations required by G.S. 87-21(b), except during oral examinations provided pursuant to G.S. 87-21(b).

(c) Applicants for licensure as a fire sprinkler contractor other than pursuant to G.S. 87-21(h) must submit evidence of current certification by the National Institute for Certification and Engineering Technology (NICET) for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout as the prerequisite for licensure. Current certification by NICET is in lieu of separate examination conducted by the Board.

*History Note: Authority G.S. 87-18; 87-21(a); 87-21(b); Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Amended Eff. July 1, 1991; May 1, 1989; August 1, 1982;  
Temporary Amendment Eff. September 15, 1997.*

### .0306 APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for regular examinations shall file an application in the office of the executive secretary on or before the date set out on the examination application form,

which date shall be no more than 60 days prior to the examination.

(b) Applicants for each plumbing or heating examination shall present evidence at the time of application on forms provided by the Board to establish two years on-site full-time experience in the installation, maintenance, service or repair of plumbing or heating systems related to the category for which license is sought, whether or not license was required for the work performed. One year of experience in the design or installation of fuel piping is required for fuel piping license. Practical experience should directly involve plumbing, heating or fuel piping and may include work as a field superintendent, project manager, journeyman, mechanic or plant stationary operator directly involved in the installation, maintenance, service or repair of such systems. Work as a local government inspector of plumbing or heating systems while qualified by the Code Officials Qualification Board, work as a field representative of this Board or work by a graduate of an ABET accredited engineering or engineering technology program with direct on-site involvement with plumbing or heating system construction, construction supervision, plant engineering or operation may utilize such work as evidence of practical experience; provided that Board members and employees may not sit for examination during their tenure with the Board.

(c) Applicants who obtain a license will receive a certificate issued by the Board, bearing the license number assigned to the qualifying individual.

(d) Fire Sprinkler contractors will meet experience requirements in accordance with NICET examination criteria.

*History Note: Authority G.S. 87-18; 87-21(b); Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Amended Eff. September 1, 1994; November 1, 1993; April 1,*

1991; May 1, 1990;

Temporary Amendment Eff. September 15, 1997.

#### .0404 ACTIVE EMPLOYMENT

(a) In each separate place of business or branch thereof operated by a contractor licensed by the Board, there shall be on active on-site employment a person licensed in accordance with the provisions of G.S. 87, Article 2 and whose duties are to supervise all installations falling within his license qualification.

(b) Separate place of business or branch thereof shall mean any office or facility of any kind:

- (1) from which ~~plumbing, heating or fire sprinkler business work requiring license~~ is solicited or conducted;
- (2) from which ~~plumbing, heating or fire sprinkler contracts for work requiring license~~ are negotiated or entered into; or
- (3) from which requests for ~~plumbing, heating or fire sprinkler work or service requiring a license work requiring license~~ are received and accepted.

(c) A temporary field office facility used solely to conduct the ~~plumbing, heating or fire sprinkler business work requiring license~~ involved in an existing contract or contracts entered into by the main license office and from which no new business is solicited or conducted shall not be deemed a separate place of business or branch thereof.

*History Note: Authority G.S. 87-18; 87-21(a)(5); 87-21(a)(6); 87-26;*

*Eff. February 1, 1976;*

*Readopted Eff. September 29, 1977;*

*Amended Eff. July 1, 1991; May 1, 1989;*

*Temporary Amendment Eff. September 15, 1997.*

#### .0506 MINOR REPAIRS AND ALTERATIONS

~~(a) The connection of a factory-installed and inspected mobile home drainage system to an existing approved premises sewer system, which premises sewer system extends from the septic tank or municipal sewer system, constitutes a minor repair or replacement. The connection of a factory-installed mobile home water system to an existing approved potable water supply on the premises constitutes a minor repair or replacement.~~

(a) ~~(b)~~ The initial installation or the subsequent replacement of a hot water heater in any structure requires a license in plumbing contracting except that the replacement of a hot water heater, with no change in fuel or energy source, energy use rate, routing or sizing of venting or piping, constitutes a minor replacement within the meaning of G.S. 87-21(c).

(b) ~~(c)~~ The installation of a water purification system which interrupts the potable water supply does not constitute a minor repair or replacement within the meaning of G.S. 87-21(c).

(c) ~~(d)~~ Any connection, repair, or alteration which requires interruption of the potable water supply and if poorly

performed creates substantial risk of contamination of the potable water supply is not a minor repair, replacement or alteration.

(d) ~~(e)~~ Any connection, repair or alteration which if poorly performed creates substantial risk of fire or exposure to carbon monoxide, open sewage or other gases is not a minor repair, replacement or alteration.

(e) ~~(f)~~ The failure to enumerate above any specific type of repair, replacement or alteration shall not be construed in itself to render said repair, replacement or alteration as minor within the meaning of G.S. 87-21(c).

*History Note: Authority G.S. 87-18; 87-21(a)(1); 87-21(a)(5); 87-21(c);*

*Eff. February 1, 1976;*

*Readopted Eff. September 29, 1977;*

*Amended Eff. November 1, 1993; May 1, 1989; April 15, 1978; February 1, 1978;*

*Temporary Amendment Eff. September 15, 1997.*

#### .0511 FUEL PIPING

The contracting or installation of fuel piping extending from an approved fuel source at or near the premises, which piping is used or may be used partly or entirely to supply fuel to plumbing or heating systems or equipment or which, by its installation, may alter or affect the fuel supply to plumbing or heating systems or equipment within the meaning of G.S. 87-21(a) requires either plumbing, Heating Group 1, Heating Group 2, Heating Group 3, or fuel piping license. Class II license is restricted to single family detached residential dwellings.

*History Note: Authority 87-21(a);*

*Temporary Adoption Eff. September 15, 1997.*

#### .1102 LICENSE FEES

(a) Except as set out in this Rule, the ~~The~~ annual license fee for statewide ~~plumbing and heating licenses issued by this Board~~ in the name of an individual, corporation, partnership, or business with a trade name is seventy-five dollars (\$75.00).

(b) The annual license fee for ~~plumbing and heating a~~ license licenses limited in scope territory to cities or towns of less than 10,000 population and ~~issued in the name of an individual, corporation, partnership or business with a trade name~~ is forty-five dollars (\$45.00).

(c) The annual license fee for ~~an a~~ licensed individual who is not actively engaged in the business of ~~plumbing or heating contracting requiring license~~ by reason of full-time employment as a local government plumbing, heating or mechanical inspector and who holds qualifications from the Code Officials Qualification Board is fifteen dollars (\$15.00).

(d) The initial application fee for license as a fire sprinkler contractor is seventy-five dollars (\$75.00). The annual license fee for statewide licenses issued to a fire sprinkler contractor in the name of an individual, corporation, partnership or business with a trade name is two-hundred



seventy-five dollars (\$275.00).

(e) The annual license fee for an individual whose qualifications are listed as the second or subsequent individual on a corporation, partnership, or business with a trade name under Paragraphs (a), (b) or (d) of this Rule is ten dollars (\$10.00).

*History Note: Filed as a Temporary Amendment Eff. November 17, 1989 for a period of 77 days to expire on February 1, 1990;*

*Authority G.S. 87-18; 87-21; 87-22;*

*Eff. May 1, 1989;*

*Amended Eff. November 1, 1994; July 1, 1991; March 1, 1990;*

*Temporary Amendment Eff. September 15, 1997.*

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of August 21, 1997 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

*These rules unless otherwise noted, will become effective on the 31st legislative day of the 1998 Short Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.*

APPROVED RULE CITATION			REGISTER CITATION TO THE NOTICE OF TEXT
4	NCAC 06C	.0205	11:29 NCR 2182
4	NCAC 06C	.0409	11:29 NCR 2182
10	NCAC 03R	.3031*	11:08 NCR 459
10	NCAC 03R	.3033*	11:08 NCR 459
10	NCAC 35E	.0101*	11:30 NCR 2301
10	NCAC 35E	.0105 - .0106*	11:30 NCR 2301
10	NCAC 35E	.0308*	11:30 NCR 2302
10	NCAC 42J	.0001*	11:30 NCR 2303
10	NCAC 42J	.0004	11:30 NCR 2303
12	NCAC 11	.0202	11:14 NCR 1136
15A	NCAC 02H	.0225*	11:27 NCR 2073
15A	NCAC 03M	.0503	11:26 NCR 1988
15A	NCAC 03M	.0506*	11:26 NCR 1990
15A	NCAC 03M	.0507	11:26 NCR 1991
15A	NCAC 03M	.0514	11:26 NCR 1991
15A	NCAC 03O	.0204* Amended Eff. 9-1-97	not required, G.S. 150B-21.5
15A	NCAC 07H	.1202*	11:11 NCR 918
15A	NCAC 07H	.1205*	11:11 NCR 918
15A	NCAC 07K	.0203*	11:11 NCR 923
19A	NCAC 02B	.0164*	11:26 NCR 1969
24	NCAC 01P	.0103*	11:28 NCR 2132

**TITLE 10 - DEPARTMENT OF HUMAN  
RESOURCES**

**CHAPTER 3 - FACILITY SERVICES**

**SUBCHAPTER 3R - CERTIFICATE OF NEED  
REGULATIONS**

**SECTION .3000 - PLANNING POLICIES AND NEED  
DETERMINATIONS**

**.3031 EQUIPMENT NEED DETERMINATIONS  
(REVIEW CATEGORY H)**

Unless otherwise specified in rules, the need determinations for equipment identified in G.S. 131E-176(16)(f1) shall be in accordance with the State Medical Facilities Plan as approved by the Governor.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Eff. July 1, 1998.*

**.3033 OPEN HEART SURGERY SERVICES NEED  
DETERMINATIONS (REVIEW  
CATEGORY H)**

It is determined that there is no need for additional open heart surgery services by anyone.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Eff. August 1, 1998.*

**CHAPTER 35 - FAMILY SERVICES**

**SUBCHAPTER 35E - SOCIAL SERVICES BLOCK**



## GRANT (TITLE XX)

## SECTION .0100 - CONDITIONS OF ELIGIBILITY

**.0101 BASIC ELIGIBILITY CRITERIA**

In addition to the requirements of 10 NCAC 35D .0300, in order for an individual to be determined eligible to receive services funded under the Social Services Block Grant (Title XX), it must be established that he is eligible on the basis of need as specified in the target population for the services requested as set forth in 10 NCAC 35 through 37 and 10 NCAC 41 through 42 except that for purposes of providing child day care services, transportation services, or the federally funded sterilization resource item of health support services, eligibility must also be determined on the basis of his income maintenance or income eligible status.

*History Note: Authority G.S. 143B-153;*

*Eff. July 1, 1983;*

*Amended Eff. May 1, 1990; July 1, 1989;*

*Temporary Amendment Eff. October 21, 1996;*

*Amended Eff. July 1, 1998.*

**.0105 MAXIMUM INCOME LEVELS FOR SERVICES**

(a) Sixty Percent of Established Income. An individual whose income unit's gross monthly income is less than 60 percent of the state's established income, adjusted according to size of the income unit as defined in Rule .0103 of this Section, may be eligible for transportation services or the federally funded sterilization resource item of health support services funded under the Social Services Block Grant (Title XX) if available in the county in which he lives.

(b) Eighty Percent of Established Income. An individual whose income unit's gross monthly income is as much as 60 percent but less than 80 percent of the state's established income, adjusted according to size of the income unit as defined in Rule .0103 of this Section, may be eligible for the federally funded sterilization resource item of health support services if available in the county in which he lives.

*History Note: Authority G.S. 143B-153(2a)b.;*

*Eff. July 1, 1983;*

*Amended Eff. March 1, 1994; July 1, 1989; October 1, 1987;*

*July 1, 1984;*

*Temporary Amendment Eff. October 21, 1996;*

*Amended Eff. July 1, 1998.*

**.0106 WITHOUT REGARD TO INCOME STATUS**

Individuals may be determined eligible for the following services on the basis of need for the service and without regard to their income:

- (1) adoption services;
- (2) adult placement services;
- (3) foster care services for children;
- (4) protective services for adults;
- (5) protective services for children;

- (6) child day care services, transportation services, and the federally funded sterilization resource item of health support services funded under the Social Services Block Grant (Title XX) that are needed in conjunction with protective services may be provided without regard to income during the first 12 months that protective services are provided if such service is available in the county in which the individual lives and the agency has received a report pursuant to G.S. 7A-543 or G.S. 108A-102, has initiated protective services in accordance with program policies, and has determined that such other services are needed to support the provision of protective services;
- (7) delinquency prevention (including residential care);
- (8) employment and training support services (including transportation and resource items);
- (9) health support services (including transportation and resources for the aging, disabled or handicapped but excluding the sterilization resource item);
- (10) individual and family adjustment services (including camping component);
- (11) problem pregnancy (including residential services);
- (12) community living services;
- (13) day care services for adults;
- (14) housing and home improvement services (including resource items);
- (15) in-home aide services (levels I through IV) as described in 10 NCAC 42H .0903 and .0904, which is incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of the adoption of this Rule;
- (16) personal and family counseling;
- (17) preparation and delivery of meals; and
- (18) residential treatment for the emotionally disturbed.

*History Note: Authority G.S. 143B-153(2a)b.;*

*Eff. July 1, 1983;*

*Amended Eff. March 1, 1994; December 1, 1991; May 1, 1990; July 1, 1989;*

*Temporary Amendment Eff. October 21, 1996;*

*Amended Eff. July 1, 1998.*

## SECTION .0300 - SERVICE DEFINITIONS

**.0308 HEALTH SUPPORT SERVICES**

(a) Primary Service. Health support services means helping individuals and families to recognize health needs including those related to alcohol and drug abuse, to cope with incapacities and limited functioning resulting from

aging, disability, or handicap and to choose, obtain and use resources and mechanisms of support under Medicaid (including the early and periodic screening, diagnosis and treatment program), medicare, maternal and child health programs and from other public or private agencies or providers of health services; counseling and planning, as appropriate, with individuals, families, and health providers to help assure continuity of treatment and the carrying out of health recommendations; helping individuals to secure admission to medical institutions and children to secure admission to other health-related facilities as needed; and family planning services as described in (b) of this Rule. At county option, transportation, when not otherwise available, may be provided as necessary to access needed medical and health care resources.

(b) Components. Family planning services to enable individuals and families to voluntarily limit the family size or to space the children, and to prevent or reduce the incidence of births out of wedlock. Such services include educational activities, the provision of printed materials, counseling about family planning and genetics, and help in utilizing medical and educational services available in the community and state. Also included are educational services in human sexuality appropriate to an individual's emotional and social adjustment and physical development.

(c) Optional Resource Items.

- (1) Medical Services. For individuals who are recipient of AFDC, SSI, or protective services or whose family income is less than 80 percent of the state's established income maximum for social services eligibility, payment for medical services for nontherapeutic sterilization can be provided.
- (2) Resources for the Aging, Disabled or Handicapped. At county option any combination of the following resource items may be provided as needed and appropriate to enable aging, disabled or handicapped individuals to attain or maintain the highest level of functioning possible, to promote their well-being and to prevent or reduce inappropriate institutional care.

(A) Assistance with communication to enable individuals to utilize needed health and medical resources and other community services and resources through the provision of interpreters for the deaf and the provision of telephones when not otherwise available for the aging, disabled, or handicapped who are alone and homebound, or who have a health or medical condition which necessitates ready access to or frequent use of a telephone in their home.

(B) Mobility assistance for aging, disabled and handicapped persons, through the installation of ramps, rails and other safety measures at the individual's home and the provision of escort service to health facilities and other needed resources for individuals unable to

travel or wait alone.

(C) Arranging for or providing friendly visitors or companions for part of a day to assist individuals who, because of frailty, physical or mental disability, or social isolation, have limited contacts with other people. Such companionship service offers mental and physical stimulation and provides an opportunity for observation as to the need for professional help of any kind.

(D) Provision of special health needs and supplies such as ostomy supplies, oxygen, bandages, orthopedic and other appliances needed by aging and disabled individuals in their own homes and not available through Medicaid, Medicare or resources without cost.

(d) Target Population:

- (1) This service is for individuals or families experiencing health related problems.
- (2) The family planning component is for individuals (male or female) who are of age to produce children.

*History Note: Authority G.S. 143B-153;*

*Eff. February 8, 1977;*

*Amended Eff. March 1, 1983; September 1, 1982; March 1, 1982; October 1, 1979;*

*Transferred from T10.43D .0212 Eff. July 1, 1983;*

*Amended Eff. March 1, 1994; July 1, 1984;*

*Temporary Amendment Eff. October 21, 1996;*

*Amended Eff. July 1, 1998.*

## CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

### SUBCHAPTER 42J - HEALTH SUPPORT SERVICES

#### .0001 NATURE AND PURPOSE

(a) The definition of health support services is set forth in 10 NCAC 35E .0300.

(b) Medical services (diagnosis, treatment and care) are limited to nontherapeutic sterilization.

*History Note: Authority G.S. 143B-153;*

*Eff. March 1, 1977;*

*Readopted Eff. October 31, 1977;*

*Amended Eff. July 1, 1990; July 1, 1984; June 1, 1982; September 15, 1978;*

*Temporary Amendment Eff. October 21, 1996;*

*Amended Eff. July 1, 1998.*

## TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

### CHAPTER 2 - ENVIRONMENTAL MANAGEMENT



## SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

### SECTION .0200 - WASTE NOT DISCHARGED TO SURFACE WATERS

#### .0225 CONDITIONS FOR ISSUING GENERAL PERMITS

(a) In accordance with the provisions of G.S. 143-215.1(b)(3) and (d), general permits may be developed by the Division and issued by the Director for categories of activities covered by this Rule. General permits may be written for categories of activities that involve the same or substantially similar operations, have similar treated waste characteristics, require the same limitations or operating conditions, and require the same or similar monitoring. In accordance with G.S. 143-215.10C, general permits may be issued for any category of animal operation, based on species, number of animals, and other relevant factors. Each of the general permits shall be issued under G.S. 143-215.1(d). After issuance of a general permit by the Director, persons operating facilities described by the general permit may request coverage under it, and the Director or his designee may grant appropriate certification. All individual operations which receive a "Certificate of Coverage" under a general permit are permitted under the specific general permit for which the coverage was issued. A Certificate of Coverage shall mean the approval given to facilities that meet the requirements of coverage under the general permit. Persons operating facilities covered under general permits developed in accordance with this Rule shall be subject to the same limits, conditions, management practices, enforcement authorities, and rights and privileges as specified in the general permit.

(b) Upon development of a draft general permit, the Director shall publicly notice under G.S. 143-215.4 (b)(1) and (2), at least 30 days prior to final action, an intent to issue the general permit. A one time publication of the notice in a newspaper having general circulation in the geographic areas affected by the proposed permit shall be required. The notice shall provide the name, address and phone number of the agency issuing the notice, a brief description of the intended action, and a brief description of the procedures for the formulation of final determinations, including a 30-day comment period and other means by which interested persons may comment upon the determinations.

(c) No provisions in any general permit issued under this Rule shall be interpreted as allowing the permittee to violate state surface water quality standards, groundwater quality standards outside a Compliance Boundary established in accordance with 15A NCAC 2L .0107 (b), (c), (e)(2)(A), (e)(2)(C), (f)(1), (f)(3), (h), (j) and (k), or other applicable environmental standards. Construction of new water supply wells for human consumption shall be prohibited within Compliance Boundaries for facilities covered under general permits issued under this Section. General permits issued pursuant to this Rule will be considered individual permits

for purposes of Compliance Boundaries established under 15A NCAC 2L .0107.

(d) To obtain an individual certificate of coverage, a Notice of Intent to be covered by the general permit must be given using forms provided by the Division. Coverage under the general permit shall be granted unless the Director makes a determination under Paragraph (h) of this Rule that an individual permit is required. If all requirements are not met, an individual permit application and full application review procedure shall be required.

(e) General permits shall be effective for a term not to exceed five years at the end of which the Division may renew them. The Division shall satisfy public notice requirements prior to renewal of general permits. If the Division chooses not to renew a general permit, all operations covered under that general permit shall be notified to submit applications for individual permits.

(f) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Section shall be considered in violation of G.S. 143-215.1.

(g) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any operation covered by this Rule.

(h) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit may include:

- (1) the operation is a significant contributor of pollutants to the waters of the state;
- (2) conditions at the permitted site change, altering the constituents or characteristics of the wastewater such that the operation no longer qualifies for coverage under a general permit;
- (3) noncompliance with the general permit;
- (4) noncompliance with Division Rules;
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the operation;
- (6) a determination that there has been or is the potential to have a direct discharge of wastewater, sludge or residuals to waters of the state;
- (7) the system has been allowed to deteriorate or leak such that it poses an immediate threat to the environment.

(i) General permits or individual certificate of coverages may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of rules of this Section.

*History Note: Authority G.S. 143-215.1; 143-215.3(a)(1); 143-215.10C;*  
*Temporary Adoption Eff. November 8, 1996;*  
*Temporary Amendment Eff. May 8, 1997;*  
*Amended Eff. August 1, 1998.*

## **CHAPTER 3 - MARINE FISHERIES**

### **SUBCHAPTER 3M - FINFISH**

#### **SECTION .0500 - OTHER FINFISH**

##### **.0506 SNAPPER-GROUPER**

(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the fishery for species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan, including subsequent amendments and editions, for the Snapper-Grouper Fishery of the South Atlantic Region and for sea bass north of Cape Hatteras in order to comply with or utilize conservation equivalency to comply with the management requirements incorporated in the Fishery Management Plan for Sea Bass, including subsequent amendments and editions, developed cooperatively by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission:

- (1) Specify size;
- (2) Specify seasons;
- (3) Specify areas;
- (4) Specify quantity;
- (5) Specify means/methods; and
- (6) Require submission of statistical and biological data.

The species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region is hereby incorporated by reference and copies are available at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.

(b) It is unlawful to possess black sea bass less than eight inches total length taken south of Cape Hatteras (35° 15' N, Latitude).

(c) It is unlawful to possess gag grouper (gray grouper) less than 20 inches total length.

(d) It is unlawful to possess black grouper less than 20 inches total length.

(e) It is unlawful to possess red snapper less than 20 inches total length.

(f) It is unlawful to possess red grouper less than 20 inches total length.

(g) It is unlawful to possess yellowfin grouper (fireback grouper) less than 20 inches total length.

(h) It is unlawful to possess scamp less than 20 inches total length.

(i) It is unlawful to possess yellowmouth grouper less than 20 inches total length.

(j) Greater amberjack:

- (1) It is unlawful to possess greater amberjack less than 36 inches fork length except that persons fishing under the bag limit established in Subparagraph (2) of this Paragraph may possess a minimum 28 inch amberjack.
- (2) It is unlawful to possess more than three greater amberjack per person per day.

(k) Vermilion Snapper:

- (1) It is unlawful to possess vermilion snapper (beeliner) less than 12 inches total length except that persons fishing under the bag limit established in Subparagraph (2) of this Paragraph may possess 10 inch vermilion snapper.
- (2) It is unlawful to possess more than 10 vermilion snapper per person per day taken for non-commercial purposes.

(l) It is unlawful to possess silk snapper (yelloweye snapper) less than 12 inches total length.

(m) It is unlawful to possess blackfin snapper (hambone snapper) less than 12 inches total length.

(n) It is unlawful to possess red porgy (pink or silver snapper) less than 12 inches total length.

(o) Speckled hind (Kitty Mitchell) and Warsaw grouper:

- (1) It is unlawful to sell or offer for sale speckled hind or Warsaw grouper.
- (2) It is unlawful to possess more than one speckled hind or one Warsaw grouper per vessel per trip.

(p) Combined Bag Limit for Snapper. It is unlawful to possess more than 10 vermilion snappers and 10 other species of snappers, of which no more than two may be red snapper, taken in any one day unless fishing aboard a vessel holding a federal vessel permit for snapper-grouper authorizing the bag limit to be exceeded.

(q) Combined Bag Limit for Grouper:

- (1) It is unlawful to possess more than five grouper taken in any one day unless fishing aboard a vessel holding a federal vessel permit for snapper-grouper authorizing the bag limit to be exceeded.
- (2) Vessels holding a federal permit authorizing the bag limit to be exceeded may not possess more than one speckled hind or one Warsaw grouper.

(r) It is unlawful to possess Nassau grouper or jewfish.

(s) Fish Traps/Pots:

- (1) It is unlawful to use or have on board a vessel fish traps for taking snappers and groupers except sea bass pots as allowed in Subparagraph (2) of this Paragraph.
- (2) Sea bass may be taken with pots that conform with the federal rule requirements for mesh sizes and pot size as specified in 50 CFR Part 646.2 and openings and degradable fasteners specified in 50 CFR Part 646-22(c)(2)(i) and rules published in 50 CFR Part 648.144 pertaining to sea bass north of Cape Hatteras (35° 15' N Latitude).

*History Note: Authority G.S. 113-134; 113-182; 113-221;*



143B-289.4;

Eff. January 1, 1991;

Amended Eff. March 1, 1996; September 1, 1991;

Temporary Amendment Eff. December 23, 1996;

Amended Eff. July 1, 1998; April 1, 1997.

## SUBCHAPTER 30 - LICENSES, LEASES, AND FRANCHISES

### SECTION .0200 - LEASES AND FRANCHISES

#### .0204 MARKING SHELLFISH LEASES AND FRANCHISES

(a) All shellfish bottom leases, franchises, and water column leases shall be marked as follows:

(1) Shellfish bottom leases and franchises shall be marked by:

- (A) Stakes of wood or plastic material at least three inches in diameter at the water level and extending at least four feet above the high water mark. The stakes shall be firmly jettied or driven into the bottom at each corner.
- (B) Signs displaying the number of the lease or franchise and the name of the owner printed in letters at least three inches high must be firmly attached to each corner stake.
- (C) Supplementary stakes of wood or plastic material, not farther apart than 50 yards or closer together than 50 feet and extending at least four feet above the high water mark, must be placed along each boundary, except when such would interfere with the use of traditional navigation channels.

(2) Water column leases shall be marked by anchoring two yellow buoys, meeting the material and minimum size requirements specified in 15A NCAC 3J .0103(b) at each corner of the area or by larger buoys, posts and signs as identified and approved by the Secretary in the Management Plan.

(b) Stakes marking areas of management within shellfish bottom leases or franchises, as approved in the management plan, must conform to Subparagraph (a)(1)(C) of this Rule and may not exceed one for each 1,200 square feet. Marking at concentrations of stakes greater than one for each 1,200 square feet constitutes use of the water column and a water column lease is required in accordance with G.S. 113-202.1 or G.S. 113-202.2.

(c) All areas claimed in filings made pursuant to G.S. 113-205 as deeded bottoms through oyster grants issued by the county clerk of court or as private bottoms through perpetual franchises issued by the Shellfish Commission shall be marked in accordance with Paragraph (a) of this Rule, except the sign shall include the number of the franchise rather than the number of the lease. However, claimed areas not being managed and cultivated shall not be marked.

(d) It is unlawful to fail to remove all stakes, signs, and markers within 30 days of receipt of notice from the Secretary pursuant to Departmental Rule 15A NCAC 1G .0207 that a G.S. 113-205 claim to a marked area has been denied.

(e) It is unlawful to exclude or attempt to exclude the public from allowable public trust use of navigable waters on shellfish leases and franchises including, but not limited to, fishing, hunting, swimming, wading and navigation.

(f) The Division has no duty to protect any shellfish bottom lease, franchise, or water column lease not marked in accordance with Paragraph (a) of this Rule.

*History Note: Authority G.S. 76-40; 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 143B-289.4;*

*Eff. January 1, 1991;*

*Amended Eff. September 1, 1997; March 1, 1994; October 1, 1992; September 1, 1991.*

## CHAPTER 7 - COASTAL MANAGEMENT

### SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

#### SECTION .1200 - GENERAL PERMIT FOR CONSTRUCTION OF PIERS, DOCKS, AND BOAT HOUSES IN ESTUARINE AND PUBLIC TRUST WATERS

#### .1202 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address.

(b) The applicant must provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant shall be notified that he must submit an application for a major development permit.

(c) Approval of individual projects shall be acknowledged

in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section.

(d) Construction must be completed within 90 days of the approval of the permit or the permit expires.

(e) Any modification or addition to the approved project shall require prior approval from the Division of Coastal Management.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

*Eff. March 1, 1984;*

*Amended Eff. August 1, 1998; January 1, 1990.*

## **.1205 SPECIFIC CONDITIONS**

(a) Piers, docks, and boat houses may extend or be located up to a maximum of 400 feet from the normal high water line, or the normal water level, whichever is applicable.

(b) Piers, docks, and boat houses shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public. The length of piers shall be measured from the waterward edge of any wetlands that border the water body.

(c) Piers longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier lengths shall be made from the waterward edge of any coastal wetland vegetation which borders the water body.

(d) Piers and docks shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

(e) Any portion of a pier (either fixed or floating) extending from the main structure and six feet or less in width shall be considered either a "T" or a finger pier.

(f) Any portion of a pier (either fixed or floating) greater than six feet wide shall be considered a platform or deck.

(g) "T"s, finger piers, platforms, and decks of piers on lots with shorelines 100 feet or greater in length shall not exceed a combined total area of 400 square feet. The combined total area for lots less than 100 feet shall not exceed four square feet per linear foot of shoreline.

(h) Platforms and decks shall have no more than six feet of any dimension extending over coastal wetlands.

(i) Boathouses shall not exceed 400 square feet and shall have sides extending no further than one-half the height of the walls and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.

(j) Areas enclosed by boat lifts shall not exceed 400 square feet.

(k) Piers, docks, decks, platforms and boat houses shall be single story. They may be roofed but shall not be designed to allow second story use.

(l) Pier alignments along federally maintained channels must also meet Corps of Engineers regulations for pier construction pursuant to Section 10 of the Rivers and Harbors Act.

(m) Piers, docks, and boat houses shall in no case extend more than 1/4 the width of a natural water body, human-made canal or basin. Measurements to determine widths of the water body, human-made canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier is located between longer piers within 200 feet of the applicant's property. However, the proposed pier shall not be longer than the pier head line established by the adjacent piers, nor, longer than 1/3 the width of the water body.

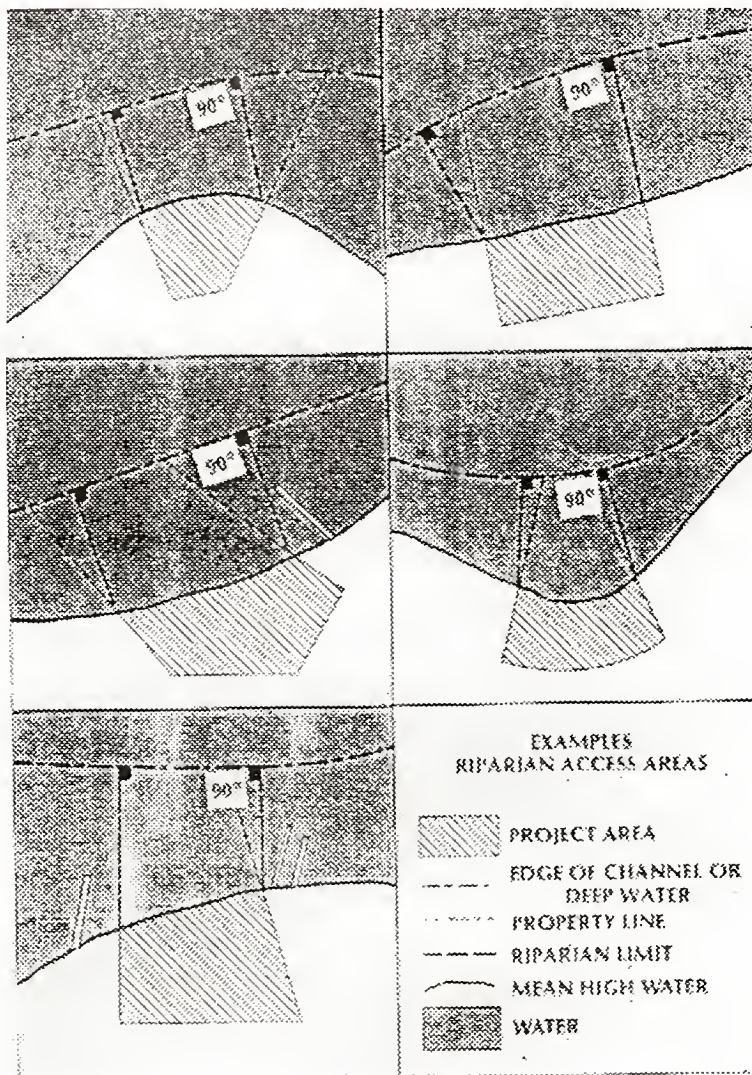
(n) Piers, docks and boat houses shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier, dock, or boat house. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in Paragraph (q) of this Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable.

(o) Piers, and mooring facilities shall be designed to provide docking space for no more than two boats.

(p) Applicants for authorization to construct a dock or pier shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.



(q) The diagram shown below illustrates the various shoreline configurations.



*History Note:* Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;  
 Eff. March 1, 1984;  
 Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990;  
 RRC Objection due to ambiguity Eff. March 18, 1993;  
 Amended Eff. August 1, 1998; April 23, 1993.

**SUBCHAPTER 7K - ACTIVITIES IN AREAS OF  
 ENVIRONMENTAL CONCERN WHICH  
 DO NOT REQUIRE A COASTAL AREA  
 MANAGEMENT ACT PERMIT**

**SECTION .0200 - CLASSES OF MINOR  
 MAINTENANCE AND IMPROVEMENTS  
 WHICH SHALL BE EXEMPTED FROM  
 THE CAMA MAJOR DEVELOPMENT  
 PERMIT REQUIREMENT**

**.0203 PRIVATE BULKHEADS: RIPRAP: AND  
 PIERS  
 EXEMPTED**

(a) The N. C. Coastal Resources Commission hereby exempts from the Coastal Area Management Act permit requirement work in the estuarine shoreline and public trust waters areas of environmental concern necessary to maintain, repair, and construct private bulkheads with backfill, and to place riprap material along shorelines, and construct piers or mooring facilities in waters of North Carolina. This exemption is subject to the following conditions and limitations:

- (1) The activities exempted by this Rule shall be private, non-commercial activities conforming to the standards and conditions contained in this Rule. This exemption does not apply to development associated with multi-unit residential developments

- larger than duplexes or to marinas, commercial harbors, community or neighborhood boat access, fish houses or similar commercial activities.
- (2) This exemption is applicable only along estuarine shorelines void of wetland vegetation types described in NCGS 113-229, or where all construction is to be accomplished landward of such vegetation, or where the pier is elevated above said wetlands.
  - (3) This exemption only applies to bulkheads, riprap, and piers in non-oceanfront areas.
  - (4) This exemption does not eliminate the need to obtain any other required federal, state, or local authorization.
  - (5) Before beginning any work under this exemption the Department of Environment, Health, and Natural Resources representative must be notified of the proposed activity to allow on-site review of the bulkhead, riprap material, or pier alignment. Notification can be by telephone, in person, or in writing. Notification must include:
    - (A) the name, address, and telephone number of landowner and location of work including county, nearest community, and water body;
    - (B) the dimensions of the proposed pier, bulkhead with backfill, or the area dimensions to be covered by placement of riprap material;
    - (C) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work. (These statements do not have to be presented at the time of notification of intent to perform work, but the permittee must make it available to CRC agents at their request.)
  - (6) The landowner must agree to perform the work authorized in this Rule in a manner so as to conform with standards for development in the estuarine shoreline area of environmental concern.
- (b) Bulkheads and Riprap: Conditions
- (1) The permittee shall maintain structure of areas of riprap material authorized in this Rule in good condition.
  - (2) Bulkhead with backfill, and placement of riprap material exempted by this Rule shall be limited to a maximum shoreline length of 200 feet.
  - (3) The bulkhead backfill and riprap materials must be obtained from an upland source.
  - (4) No excavation is exempted under this Rule except that which may be required for installation of the bulkhead wall, deadmen, cables, piles, etc.
  - (5) The proposed bulkhead alignment or area for placement of riprap material must be staked or flagged by the landowner in consultation with, or approved by, a state or federal permit officer prior to any construction activity. The bulkhead must be positioned so as not to extend more than an average distance of two feet waterward of the mean high water contour; in no place shall the bulkhead be more than five feet waterward of the mean high water contour. Construction activities must begin 90 days after approval of the alignment or area.
  - (6) The bulkhead must be solid structure constructed of treated wood, concrete slabs, metal sheet piles, corrugated asbestos sheeting, or similar materials. A structure made of organic material, tires, car bodies, or similar materials is not considered a bulkhead.
  - (7) The bulkhead must be structurally tight so as to prevent seepage of backfill materials through the bulkhead. The bulkhead must be constructed prior to any backfilling activities.
  - (8) Riprap material must consist of clean rock or masonry materials such as marl, brick, or broken concrete. Materials such as tires, car bodies, scrap metal, paper products, tree limbs, wood debris, organic material or similar material are not considered riprap.
- (c) Piers: Conditions
- (1) Exemptions for pier construction along natural shorelines are available only for lots with shoreline lengths 75 feet or greater. Exemptions may be used on shorelines in human-made canals and basins regardless of shoreline length.
  - (2) Piers and mooring facilities must not exceed 100 feet in total length off-shore; must not be within 150 feet of the edge of a federally maintained channel; must not extend past the four foot mean low water contour line (four foot depth at mean low water) of the water body; must not exceed six feet in width; must not include an enclosed structure; and must not interfere with established navigation rights of other users of the water body and must have a minimum setback of 15 feet between any part of the pier and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The four foot mean low water restriction shall not apply to piers constructed in canals and basins dredged from areas above normal high water (NHW) or normal water level (NWL).
  - (3) This exemption shall not apply to docks and piers being built within shellfish franchises or leases unless the applicant for authorization to construct can provide written confirmation of no objections to the proposal from the lessee.
  - (4) Piers authorized by this exemption shall be for the



exclusive use of the land owner, and shall not provide either leased or rented docking space or any other commercial services. Piers and mooring facilities designed to provide docking space for more than two boats shall, because of their greater potential for adverse impacts, be reviewed through the permitting process, and, therefore, are not authorized by this exemption.

- (5) Piers and docks shall in no case extend more than 1/4 the width of a natural water body, canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier is located between longer piers within 200 feet of the applicant's property. However, the proposed pier shall not be longer than the pier head line established by the adjacent piers, nor longer than 1/3 the width of the water body.
- (6) Any portion of a pier (either fixed or floating) extending from the main structure and six feet or less in width shall be considered either a "T" or a finger pier.
- (7) Any portion of a pier (either fixed or floating) greater than six feet wide shall be considered a platform or deck.
- (8) "T"s, finger piers, platforms, and decks of piers must not exceed a combined total area of 200 square feet.
- (9) Platforms and decks shall have no more than six feet of any dimension extending over coastal wetlands and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

*History Note: Authority G.S. 113A-103(5)c; 113A-118(a); Eff. March 29, 1978;  
Amended Eff. August 1, 1998; May 3, 1993; December 1, 1991; May 1, 1990; July 1, 1987.*

## TITLE 19A - DEPARTMENT OF STATE TRANSPORTATION

### CHAPTER 2 - DIVISION OF HIGHWAYS

#### SUBCHAPTER 2B - HIGHWAY PLANNING

##### SECTION .0100 - RIGHT OF WAY

###### **.0164 USE OF RIGHT OF WAY CONSULTANTS**

(a) Introduction and purpose. The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway system. However, it is recognized that situations arise and

certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

This Rule is established for the preparation, execution and administration of contracts for right of way acquisition services by consultant firms that are over ten thousand dollars (\$10,000.00).

Due to the diversity of contract types, some portions of this Rule may not be fully applicable to all situations. The Right of Way Branch Manager shall determine when waivers from portions of this Rule are justified. Guidelines for determining if a waiver is justified shall include:

- (1) Emergency situation exists that affects the health and safety of the traveling public.
- (2) Availability of pre-qualified firms willing to perform specified work according to the Department's schedule.
- (b) The following are incorporated by reference including any subsequent amendments or editions:

- (1) General Statute 136-28.1(f) and General Statute 130A-444 thru General Statute 130A-451.
- (2) 23 CFR 710-720, FHWA right of way regulations which contain some contracting requirements.
- (3) 49 CFR 18.36, USDOT contracting regulations.

These documents are available for public inspection in the office of the Right of Way Branch. Copies may be obtained from the Right of Way Consultant Coordinator at a cost of five dollars (\$5.00) for each document.

(c) Definitions. The following definitions are for the purpose of clarifying and describing words and terms used in this Section:

- (1) Right of Way Consultant Coordinator - The individual who is assigned the responsibility of initiating, negotiating, and administering a contract for professional or specialized services.
- (2) Cost per Unit of Work - A method of compensations based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) Cost Plus Fixed Fee - A price based on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) Cost Proposal - A detailed submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) Firm - Any private agency, firm, organization, business or individual offering qualified right of way acquisition services.
- (6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
- (7) Payroll Burden - Employer paid fringe benefits including employer's portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the

- State, vacation, sick leave, holidays, workers' compensation and other such benefits.
- (8) **Proposal** - An offer by a firm to perform specific work or services for the Department at specified rates of compensation.
  - (9) **Scope of Work** - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.
  - (10) **Contract Amendment** - A written supplement to the contract which modifies the terms of an existing contract.
  - (11) **Termination Clause** - A contract provision which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.
  - (12) **Right of Way Consultant Selection Committee** - The Committee shall consist of the Branch Manager, Assistant Branch Manager, Unit Heads, and the Right of Way Consultant Coordinator or their designated representatives and shall be chaired by the Branch Manager. When Federal funds will be used as compensation for services to be solicited, a representative of the Federal Highway Administration shall sit with the Committee but shall not be a voting member.

(d) **Application.** This Rule shall apply to all contracts for right of way acquisition services which cost more than ten thousand dollars (\$10,000.00) and are obtained by the Department of Transportation pursuant to G.S. 136-28(f).

(e) **Pre-qualification of firms.** The Department shall advertise for firms interested in performing right of way acquisition services for the North Carolina Department of Transportation when necessitated by its projected workload. The advertisement shall be published in the North Carolina Purchase Directory, a bi-monthly publication of the N.C. Department of Administration. The advertisement shall indicate that interested firms must respond by letter to the Department indicating their interest within two weeks of the date of the advertisement. The response shall include the Federal Government's Government Accounting Office Forms 254 and 255, and copies of the firms latest brochures. Additional firms may be considered for pre-qualification at any time that the Department recognizes a need based on current projected workload for additional pre-qualified firms. Evaluation of the firms expressing interest shall be based on the following considerations:

- (1) Experience, education, reputation, and required certifications of staff in the fields of expertise required by the contract including negotiations, appraisals, and relocation assistance;
- (2) Number of staff available to perform the services required by the contract including negotiations, appraisals, and relocation assistance;

- (3) Financial ability to undertake the proposed work;
- (4) The firm's accounting system including ability to identify costs chargeable to the project;
- (5) Past performance by the firm on previous Right of Way acquisition contracts including meeting the time schedule for the work;
- (6) Equipment necessary to perform the required services.

A number of firms sufficient to perform the anticipated workload that meet the qualifications in Paragraphs (e)(1) through (e)(6) of this Rule shall be designated as pre-qualified to perform right of way acquisition services for the North Carolina Department of Transportation. The number of pre-qualified firms to be maintained on the Department's pre-qualified list shall be determined by the Manager of the Right of Way Branch.

(f) **Register of pre-qualified firms.** The Right of Way Consultant Coordinator shall maintain a "Register of Pre-Qualified Firms" from whom specific project proposals may be solicited to perform right of way acquisition services for the North Carolina Department of Transportation - Right of Way Branch.

(g) **Request for approval to solicit specific project proposals.** The Right of Way Consultant Selection Committee through the Manager of Right of Way shall determine when the need for right of way acquisition services exists. Upon determining that a need exists, the Committee shall request approval from the Branch Manager to solicit proposals for the work.

The request shall be in writing and shall include the type of work and specific justification for the work being performed by a consultant firm such as:

- (1) non-availability of manpower,
- (2) lack of expertise, or
- (3) other reasons.

(h) **Solicitations of specific project proposals.** Specific Project Proposals shall be solicited from all Pre-Qualified Firms. Solicitations shall be by direct mailing of plans and Specific Project Proposal.

The Right of Way Consultant Coordinator, upon the approval of the Manager of Right of Way, shall prepare the requests for proposals. The request shall contain plans and information describing the location of the project, types and scope of work required, and the time schedule for accomplishing the work.

The solicitation for a Specific Project Proposal shall require that all firms shall attend a Scoping Meeting on a specified date in order to qualify to submit a Specific Project Proposal for consideration. Any firm that does not wish to submit a Specific Project Proposal on a particular project shall advise, in writing, the Manager of Right of Way of their decision not to submit a Specific Project Proposal for that project.

(i) **Selection of firm for specific project contract.** The Right of Way Consultant Selection Committee shall review all responses received to the request for proposals and shall select three firms from those indicating interest (except when there are fewer than three responses). When several projects



are under consideration at the same time, a firm shall be selected for each project and two alternates may be selected from the entire group, at the discretion of the Selection Committee. These firms shall be listed in descending order of preference based on the Selection Committee's review and analysis of all responses. The Committee may elect to interview all or part of the firms responding to the request for proposal prior to establishing the order of preference. The Selection Committee's file shall be documented as to the reasons for the selection of a firm.

In the evaluation of the firms submitting Specific Project Proposals, the following factors shall be considered:

- (1) The monetary amount of the competitive proposal;
- (2) The firm personnel who are currently available to perform right of way acquisition services on the specific project and their qualifications; and
- (3) The ability of the firm to complete the work according to the Department's schedule.

Any firm selected to perform Right of Way Services for the North Carolina Department of Transportation shall be required to establish an office at the location of the project. This office shall be the location for maintaining all project records open for review by appropriate Department personnel.

After the authorization to proceed to negotiations is given by the Branch Manager, the Right of Way Consultant Coordinator shall notify the firm chosen by the Selection Committee.

(j) Negotiation of specific project contract. Prior to receiving a specific project proposal, the Right of Way Consultant Coordinator shall prepare an estimate of the cost of performing the work in-house. This estimate shall be used in evaluating the acceptability of the selected firm's cost proposal.

If considered necessary by the Right of Way Consultant Coordinator a meeting with the selected firm may be scheduled to discuss the scope of the proposed work. The discussions will vary depending upon the firm's familiarity with the Department's methods, policies, standards, etc. For firms unfamiliar with the Department's requirements, the discussions shall include:

- (1) Policies used by the Department for the type and scope of work involved;
- (2) A copy of a contract in draft form;
- (3) Methods of payment;
- (4) Procedures for invoicing;
- (5) Standard forms to be used;
- (6) Fiscal requirements;
- (7) Items and services to be provided by the Department.

A representative of the firm shall keep minutes of the meeting, have them typed and submit a copy to the Right of Way Consultant Coordinator. The minutes shall be reviewed for completeness, accuracy and confirmation of mutual understanding of the scope of work. The minutes shall be approved by the signature of the Right of Way Consultant Coordinator and an approved copy shall be returned to the

firm.

The firm's competitive cost proposal shall be supported by a breakdown of the manhours required to perform each of the services contained in the contract and the fixed billable rate for each of the classifications of personnel to be utilized. The fixed fee must be specifically broken out on the firm's specific project cost proposal. The firm's cost proposal must also include a detailed breakdown of all non-salary direct costs and any sub-contract or fee services.

Upon receipt of the selected firm's cost proposal, a review shall be made. The review shall include a comparison with the in-house estimate and is intended to determine both the reasonableness of the proposal and areas of substantial differences which may require further discussion and negotiation. When further negotiations are required, they shall be the responsibility of the Right of Way Consultant Coordinator.

The final negotiations shall satisfactorily conclude all remaining points of difference and shall consider any comments submitted by the External Audit Unit. The Right of Way Consultant Coordinator with the concurrence of the Manager of Right of Way shall approve the final fee.

If an acceptable contract cannot be negotiated, negotiations shall be terminated, the firm shall be notified in writing and the next listed firm shall be contacted to initiate negotiations for the work.

(k) Board of Transportation approval and execution of contract. After final negotiations are completed, the firm shall execute a minimum of two contract originals and submit them to the Consultant Coordinator.

The Consultant Coordinator shall submit the contract to the State Highway Administrator who may consult with the Advisory Budget Commission pursuant to G.S. 136-28.1(f). The Manager of Right of Way shall submit the proposed contract to the Board of Transportation for approval. After the Board of Transportation approves the contract, the Manager of Right of Way shall execute and return the contract to the Right of Way Consultant Coordinator.

The Right of Way Consultant Coordinator shall transmit one original contract to the contracting firm and shall retain one in the project file. The Consultant Coordinator shall provide each of the following with a copy of the contract: the Manager of DOT Program and Policy Branch; DOT Fiscal Section; and Federal Highway Administration when federal-aid funds are involved.

(l) Sub-contracting. A contracting firm may sublet portions of the work proposed in the contract only upon approval of the Right of Way Consultant Coordinator.

The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor shall submit the proper supporting data to the Contract Administrator for all work that is proposed to be sublet.

(m) Methods of compensation:

- (1) Lump Sum - This method of compensation is suitable for contracts where the amount and character of required work or services can be

clearly defined and understood by both the Department and the contracting firm.

- (2) **Cost Plus Fixed Fee** - This method of compensation is suitable for contracts where the general magnitude of work is known but the scope of work or period of performance cannot be defined clearly and the Department needs more flexibility in expediting the work without excessive amendments to the contract.
- (3) **Cost Per Unit of Work** - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.
- (4) **Cost Plus a Percentage of Cost** - This method of compensation shall not be used.

(n) **Administration of contract.** The administration of the contract shall be the responsibility of the Right of Way Consultant Coordinator. This shall include the review of invoices and recommendation for payment to the Fiscal Section.

(o) **Contract Amendments.** Each contract shall contain procedures for contract modifications and define what changes can only be made by means of a contract amendment. Any change in the amount of compensation must be accomplished by contract amendment. For contracts which use federal funds as compensation for services, the contract amendment must be approved by the Federal Highway Administration.

(p) **Monitoring of work.** The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the Right of Way Consultant Coordinator.

(q) **Final payment.** When it is determined that the work is complete, the final invoice shall be approved by the Right of Way Consultant Coordinator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed.

(r) **Termination of contracts.** All contracts shall include a provision for the termination of the contract by the Department. Such termination by the Department shall be in writing and shall be effective upon receipt by the contracting firm.

*History Note: Authority G.S. 136-28.1(f); Eff. November 1, 1991;*

*Amended Eff. August 1, 1998; October 1, 1993; November 2, 1992.*

## **TITLE 24 - INDEPENDENT AGENCIES**

### **CHAPTER 1 - N.C. HOUSING FINANCE AGENCY**

#### **SUBCHAPTER 1P - FIRE PROTECTION FUND**

#### **SECTION .0100 - GENERAL INFORMATION**

##### **.0103 TYPES OF ASSISTANCE**

(a) The North Carolina Housing Finance Agency shall use program funds to make loans. Loans for smoke detection systems shall have an interest rate of 3%-6% and a maximum term of 10 years. Loans for sprinkler systems shall have an interest rate of 3% and a maximum term of 20 years. The interest rate for smoke detection system loans shall be determined based on the Fund's selection criteria as outlined in Rule .0202 of this Subchapter.

(b) The maximum loan amounts shall be calculated as defined in G.S. 122A-5.13.

(c) Loans shall be amortizing. Loans to the same facility that in aggregate total twenty-five thousand dollars (\$25,000) or more shall be secured by a note and deed of trust. Loans to the same facility that in aggregate total less than twenty-five thousand dollars (\$25,000) shall be secured by a note, unless the North Carolina Housing Finance Agency determines that the borrower may be unable to repay the note. Upon such determination the North Carolina Housing Finance Agency may require a deed of trust or other security in addition to the note. These loan documents shall provide for the acceleration of the debt in the event that a facility becomes subject to a negative administrative action by the North Carolina Division of Facility Services or the United States Health Care Financing Administration that would cause revocation of licensure or, in the event that the borrower fails to make timely payments.

(d) The North Carolina Housing Finance Agency shall charge a loan origination fee and a servicing fee to reimburse actual costs. The servicing fee shall not exceed  $\frac{3}{8}$  of 1% of the loan balance.

*History Note: Authority G.S. 122A-5; 122A-5.1; 122A-5.13;*

*Temporary Adoption Eff. October 1, 1996;*

*Eff. August 1, 1998.*



**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**  
 Philip O. Redwine - Chairman  
 Vernice B. Howard  
 Teresa L. Smallwood  
 David Twiddy  
 Jim Funderburke

**Appointed by House**  
 Paul Powell- Vice Chairman  
 Steve Rader  
 George Robinson  
 Anita White  
 Mark Garside

**RULES REVIEW COMMISSION MEETING DATES**

October 16, 1997  
 November 20, 1997

December 18, 1997

**RULES REVIEW OBJECTIONS**

**COMMERCE**

**Credit Union Division**

*4 NCAC 6C .0407 - Business Loans*

*RRC Objection*

*08/21/97*

**ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

**Coastal Resources Commission**

*15A NCAC 7H .0208 - Use Standards*

*RRC Objection*

*08/21/97*

*15A NCAC 7H .1204 - General Conditions*

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**Environmental Management**

*15A NCAC 2H .0225 - Conditions for Issuing General Permits*  
*Agency Revised Rule*

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*07/17/97*

*Obj. Removed*

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**N.C. HOUSING FINANCE AGENCY**

*24 NCAC 1P .0103 - Types of Assistance*  
*Agency Revised Rule*

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*Obj. Removed*

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**HUMAN RESOURCES**

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*10 NCAC 3R .3033 - Open Heart Surgery Services Need Determinations (Rev. Cat. H)*

*RRC Objection*

*01/16/97*

*Obj. Cont'd*

*02/20/97*

*Obj. Cont'd*

*03/20/97*

*Obj. Cont'd*

*06/19/97*

*Obj. Cont'd*

*07/17/97*

*Obj. Removed*

*08/21/97*

*Agency Revised Rule*

**Social Services Commission**

*10 NCAC 42J .0005 - Funding for Medical Services*

*RRC Objection*

*08/21/97*

**TRANSPORTATION**

**Division of Highways**

*19A NCAC 2B .0164 - Use of Right of Way Consultants*  
*Agency Revised Rule*

*RRC Objection*

*07/17/97*

*Obj. Removed*

*08/21/97*

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

*Chief Administrative Law Judge*  
JULIAN MANN, III

*Senior Administrative Law Judge*  
FRED G. MORRISON JR.

**ADMINISTRATIVE LAW JUDGES**

Brenda B. Becton  
Sammie Chess Jr.  
Beecher R. Gray

Meg Scott Phipps  
Robert Roosevelt Reilly Jr.  
Dolores O. Smith

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Alcoholic Beverage Control Commission v. Masonboro County Store, Inc.	97 ABC 0432	Reilly	09/09/97	
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Alcoholic Beverage Control Commission v. Westside Tavern, Inc.	97 ABC 0586	Phipps	09/17/97	
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<b>HUMAN RESOURCES</b>				
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Ander L. Garfield v. Department of Human Resources	96 CRA 1479* <sup>3</sup>	Morrison	07/15/97	
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Daniel J. McDowell v. Department of Human Resources	97 CSE 0984	Morrison	09/10/97	
Walter McNeil v. Department of Human Resources	97 CSE 1324	Becton	09/11/97	
David Hobson v. Department of Human Resources	97 CSE 1747* <sup>11</sup>	Phipps	07/24/97	
Jerry Whitley v. Mecklenburg County Child Support Enforcement	97 CSE 2037	Reilly	08/21/97	
Linda Wade-Hargrove v. Department of Human Resources	97 DCS 0365	Becton	07/11/97	
Regina C. Sullivan v. Department of Human Resources	97 DCS 0482	Becton	07/18/97	
Teri Lynne Lanier v. Department of Human Resources	97 DCS 0738	Smith	09/05/97	
<b>INSURANCE</b>				
Joseph J. Peacock v. Department of Insurance	96 INS 0433	Becton	07/25/97	12:04 NCR 327
<b>JUSTICE</b>				
Barbara Carter Irons v. DHR, Division of Facility Services	97 DOJ 0669	Phipps	08/27/97	12:06 NCR 501
Imran Ramnarine v. Department of Justice, Company Police Program	97 DOJ 2071	Becton	06/11/97	
<b>Alarm Systems Licensing Board</b>				
Kim Brian Phelps v. Alarm Systems Licensing Board	96 DOJ 1785	Gray	08/08/97	
Daniel Joseph Dunne, III v. Alarm Systems Licensing Board	97 DOJ 0868	Phipps	09/12/97	
<b>Education and Training Standards Division</b>				
Charles Thomas Ohnmacht, Jr. v. Criml. Justice Ed./Training Stds. Comm.	96 DOJ 0353	Phipps	06/13/97	
Jon Randolph O'Dell v. Criml. Justice Ed./Training Stds. Comm.	96 DOJ 1466	Phipps	09/16/97	
James Haywood Mathews, Jr. v. Criml. Justice Ed./Training Stds. Comm.	96 DOJ 1957	Reilly	07/31/97	

# CONTESTED CASE DECISIONS

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Christopher Lee v. Criminal Justice Ed. & Training Standards Comm.	97 DOJ 0076	Morrison	06/19/97	
Steven Wayne Olsen v. Criminal Justice Ed. & Training Standards Comm.	97 DOJ 0077	Phipps	08/21/97	
Joseph Lonnie Wesson v. Criminal Justice Ed. & Training Standards Comm.		97 DOJ 0136	Reilly	08/26/97
Frank Arlander Hearne v. Criml. Justice Ed. & Training Stds. Comm.	97 DOJ 0137	Reilly	06/10/97	
Audrey McDonald Rodgers v. Sheriffs' Ed. & Training Stds. Comm.	97 DOJ 0308	Reilly	07/31/97	
William Malcolm Mourino v. Sheriffs' Ed. & Training Stds. Comm.	97 DOJ 0430	Phipps	09/16/97	
Derrick W. Bowns v. Sheriffs' Education & Training Standards Comm.	97 DOJ 0661	Smith	08/29/97	
William Wayne McDowell v. Sheriffs' Education & Training Stds. Comm.	97 DOJ 0817	Morrison	08/22/97	
<b>Private Protective Services Board</b>				
Private Protective Services Board v. Phillip L. Hanson	96 DOJ 0795	Smith	06/05/97	
Ronald Anthony Bobeck v. Private Protective Services Board	97 DOJ 0476	Morrison	06/20/97	
Harry A. House v. Private Protective Services Board	97 DOJ 0727	Phipps	09/11/97	
<b>PUBLIC INSTRUCTION</b>				
Nicholas Eirschele, by his parents, Charles & Kathy Eirschele v. Craven County Board of Education	96 EDC 0655	Mann	09/02/97	
Karen L. Holgersen v. Department of Public Instruction	96 EDC 0808	Smith	05/27/97	
Meridith Kirkpatrick, by her parent, Susan Kirkpatrick and Meridith Kirkpatrick, Individually v. Lenoir County Board of Education	96 EDC 0979	Overby	06/02/97	
Alexander & Linda Brody & their son, James Brody v. Dare County Public Schools	96 EDC 1095	Creech	08/25/97	12:07 NCR 581
Brenda Joyce Brooks Lovely v. State Board of Education	97 EDC 0089	Morrison	08/01/97	
Julius O. Webb v. Hertford County Board of Education	97 EDC 0736	Gray	09/09/97	
Karen Clark Ceccato v. Department of Public Instruction	97 EDC 0989	Smith	09/16/97	
<b>STATE PERSONNEL</b>				
<b>Brunswick Community College</b>				
Dr. Donald W. Skinner v. Brunswick Community College	97 OSP 0310	Phipps	06/12/97	
<b>Correction</b>				
Rodney Jones, Paula Hawkins, James McKoy v. Dept. of Correction	96 OSP 1051*17	Phipps	08/20/97	
Rodney Jones, Paula Hawkins, James McKoy v. Dept. of Correction	96 OSP 1119*17	Phipps	08/20/97	
Rodney Jones, Paula Hawkins, James McKoy v. Dept. of Correction	96 OSP 1120*17	Phipps	08/20/97	
Larry Wayne Pruitt, Jr. v. Department of Correction	96 OSP 1133	Gray	08/11/97	
William Hershel Bradley v. Franklin Freeman, Supt. Mark Hughes, Grant Spicer, Asst. Supt. Wade Hatley, et al, Department of Correction	96 OSP 1604	Phipps	06/19/97	
Dennis Harrell v. Department of Correction	96 OSP 2039	Chess	06/18/97	
Morton Floyd v. New Hanover Department of Correction	97 OSP 0152	Gray	06/13/97	
William A. Rich v. Dennis Rowland (Asst. Supt.) Wake Corr. Ctr. DOC	97 OSP 0542	Gray	09/02/97	
<b>Crime Control and Public Safety</b>				
Carroll E. Ward v. State Highway Patrol	97 OSP 0750	Mann	09/16/97	
<b>Employment Security Commission</b>				
Broxie J. Nelson v. Employment Security Commission	96 OSP 0378	Becton	07/10/97	
Mary H. Ranson v. Employment Security Commission	97 OSP 0387	Mann	07/24/97	
<b>Human Resources</b>				
Willie D. Parks v. Cherry Hospital, Department of Human Resources	96 OSP 0617	Phipps	09/10/97	
Robert Tilson Morley v. Department of Human Resources	96 OSP 0969	Gray	08/21/97	
Glen Sutton v. Cumberland County Department of Social Services	96 OSP 1296	Gray	07/17/97	
Pamela Massey v. Department of Human Resources	96 OSP 1927	Becton	08/28/97	12:06 NCR 497
Clifton Dean Hill v. Department of Human Resources	97 OSP 0007	Phipps	06/20/97	12:02 NCR 107
Calvin E. Kaiser v. Southeastern Mental Health Center	97 OSP 0073	Gray	08/08/97	
Troy Gaines v. Durham County Mental Health Department	97 OSP 0347	Mann	08/05/97	
Edward Percell Eason v. Department of Human Resources	97 OSP 0363	Gray	08/15/97	
Lisha Dawn Byrd v. Human Resources (Western Carolina Center)	97 OSP 0491	Morrison	08/28/97	
Antonio A. Archibeque v. Barbara D. Whitley, Dir, Stanly County DSS	97 OSP 0663	Smith	09/02/97	
DHR, Deaf & Hard of Hearing CNCSD, Evonne Broadnax v. DHR, Deaf & Hard of Hearing CNCSD	97 OSP 0756	Becton	09/03/97	
<b>Public Instruction</b>				
Frances Phillips Melott v. Department of Public Instruction	95 OSP 0907	Trawick	06/09/97	
<b>Transportation</b>				
Frank A. Tice, III v. Department of Transportation	97 OSP 0380	Mann	09/05/97	
<b>University of North Carolina</b>				
Boyd S. Taylor v. NC Central University	94 OSP 0363	Chess	09/12/97	
Diane Riggsbee-Raynor v. UNC at Chapel Hill	96 OSP 0326	Chess	06/04/97	12:01 NCR 39
Darrell J. Hampton v. NC Central University	97 OSP 0155	Mann	08/11/97	
William A. Covington v. NC A & T State University	97 OSP 0686	Becton	08/29/97	



## *CONTESTED CASE DECISIONS*

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>STATE TREASURER</b> Shelby H. Underwood, et.al. v. Trustees Teachers/St. Emp Ret. Sys.	96 DST 0390	Reilly	08/05/97	
<b>TRANSPORTATION</b> Audrey W. Harris v. Transportation, Manson/Wheat Contr., & Wake Elec.	97 DOT 0566	Gray	07/28/96	

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
96 EDC 1095

COUNTY OF DARE

ALEXANDER AND LINDA BRODY  
and their son, JAMES BRODY

Petitioners,

v.

DARE COUNTY PUBLIC SCHOOLS

Respondent.

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**FINAL DECISION**

This matter was heard before the Honorable William A. Creech, Administrative Law Judge, on April 29, 30, and May 1, 5, 6, 7, 1997, in Buxton, Dare County, North Carolina.

**APPEARANCES**

For Petitioners: Peter W.D. Wright  
Courthouse Commons  
4104 East Parham Road  
Richmond, Virginia 23228

Stacey B. Bawtinheimer  
700-B McCarthy Boulevard  
Post Office Box 12125  
New Bern, North Carolina 28561-2125

For Respondent: Allison B. Schafer  
Kathleen C. Boyd  
THARRINGTON SMITH  
209 Fayetteville Street Mall  
Post Office Box 1151  
Raleigh, North Carolina 27602-1151

**WITNESSES**

For Petitioners: Dr. Rebecca Felton  
Dr. Carl Richard ("Rick") Ellis  
Mrs. Linda Brody  
James Brody

For Respondent: Ms. Cindy Caruso  
Ms. Stephanie Hinton Gray  
Ms. Karen Folb  
Ms. Karen Folb  
Ms. Betsy Gwinn  
Dr. Wendy Levin  
Dr. Betty Levey  
Mr. Terry Jones

**PRELIMINARY STATEMENT**



1. Zander and Linda Brody bring this action on behalf of their son, James. He was born June 2, 1982. He is now fifteen years old. He has dyslexia. Petitioners alleged that the Dare County Public Schools had failed to provide James with a free, appropriate education as required by the Individuals with Disabilities Education Act and the corresponding North Carolina Act, N.C.G.S. 115C-106 *et seq.*

2. James Brody is a youngster with a high IQ. In 1991, when he was in the third grade, he was identified as a child in need of special education services. From March, 1991 through June, 1996, James received special education services from Dare County Public Schools. As a child with dyslexia, James needed remediation in his areas of weakness, reading, writing and spelling.

3. Petitioners alleged that after James left elementary school and entered Cape Hatteras Middle School for the sixth grade, Dare County abandoned their efforts to remediate him. Instead, of providing him with remediation of his reading, writing and spelling skills deficits, Dare County focused on helping him "compensate" for his dyslexia. Instead of teaching James how to read, Dare County suggested providing him with books on tape. Instead of teaching James how to spell, Dare County provided a "spell check" program.

4. Petitioners also alleged that for the next three years, James did not receive remediation of his dyslexia. These language-related skill deficits required specialized education that would result in the acquisition of reading, writing, spelling and arithmetic skills. James did not receive the specialized services tailored to his unique needs as a child with dyslexia. Because he did not receive an appropriate education during these years, James' skills in reading, spelling and written language remained severely deficient. He fell further behind his peer group. Subsequent psychological testing by Dare County and two private sector experts demonstrated that James' IQ continued to fall steadily, while receiving a "special" education. Between 1991, 1994 to 1996, his Full Scale IQ declined from 127, to 114, and eventually down to 103.

5. By the seventh grade, his parents realized that time was running out. In the summer before he entered eighth grade, the parents sent him to an intensive summer program at Landmark School. At that school, he did receive the remediation that he needed. After James returned from Landmark, his skills in reading had improved substantially and his view of himself had begun to improve.

6. Although Dare County was provided with information about what worked for James at Landmark, they did make any changes to his educational program. He remained in the generic LD Resource program at the middle school with children who had a variety of problems. He did not receive any remediation. In desperation, his parents took him to two experts in the field of dyslexia and gifted children with learning disabilities. These experts, Dr. Rebecca Felton and Dr. Rick Ellis, evaluated James and concluded that he needed an intensive program of remediation.

7. In May and June, 1996, James' parents attended two IEP meetings with staff from Dare County Public Schools. They brought in the experts who had recently evaluated James. These experts shared their recommendations with the Dare County IEP team. The parents asked that their son receive intensive remediation before it was too late. If Dare County could not provide him with remediation, they asked that Dare County place James in Landmark School where he could receive remediation.

8. Dare County advised the experts and the parents that they could not provide James with remediation because their program was not set up to do this. They also refused to act on the parents' request to place James in Landmark School where he could receive an appropriate education.

9. In August, 1996, faced with a situation in which their son was about to enter high school without an appropriate IEP, the parents requested a Due Process Hearing. In September, 1996, they withdrew James from Dare County Public Schools and sent him to Landmark School. For three years, from 1994 through 1996, Petitioners alleged that the Dare County Schools developed a series of IEPs that were fatally flawed. The Respondents denied that any of the IEPs were defective. Moreover, the Respondent contended that James was provided a free and appropriate public education and that private school placement was not necessary.

Based upon the record proper and the evidence presented, the Court makes the following:

#### **FINDINGS OF FACT**

10. James Brody entered Kindergarten at Cape Hatteras School in September, 1987. He attended first and second

grade at The Island Academy, a small private school on Hatteras Island. (Pa. Ex. 58)

11. In September, 1990, James re-entered Cape Hatteras Elementary Schools for the third grade. He began to experience academic problems immediately. (Pa. Ex. 3, Pa. Ex. 58)

12. Dare County Public Schools was aware as early as 9/20/90 that James was having difficulties in reading and written expression, and concentration problems. Early signs of depression and self-esteem problems were first documented in the Exceptional Children's Referral Form when James was in the third grade. (Pa. Ex. 3, Pa. Ex. 4)

13. A Focus of Screening developed by Dare County dated 10/4/90 noted that "Attempts to modify and adjust the program for James began as early as 9-4-90. Despite multiple adjustments, James is still having problems. The parents have attempted changes/additional assistance with limited results." (Pa. Ex. 3)

14. An Exceptional Children's Referral dated 2/6/91 noted that James has "difficulty concentrating sometimes, deficient in comprehension, reads below grade level, frequent reversals of letters and numbers, achieves below grade level in other content areas, disorganized work habits, poor handwriting, and appears depressed when unable to do work." (Pa. Ex. 4) Under Communication Skills, school staff checked "difficulty with written expression." (Pa. Ex. 4, p. 2)

15. On February 13, 1991, Dare County Schools evaluated James for the presence of a learning disability. School psychologist Mitchell Bateman found that James' Full Scale IQ was in the Superior Range (Full Scale IQ = 127) In Reading and Writing, James was functioning at the beginning of the second grade level although he was in third grade. (Pa. Ex. 7)

16. On March 6, 1991, Dare County developed their first IEP for James. This IEP proposed that after one year of special education, James' reading level would increase from a 2.2 to a 3.1 grade level as measured by the Brigance Inventory. (Pa. Ex. 9)

17. On March 6, 1992 and June 4, 1992, a year later, new IEPs were developed for James. (Pa. Ex. 12, 17)

18. On June 4, 1993, Dare County developed another IEP for James' sixth grade year. This IEP failed to include objective information about his Present Levels of Performance in reading, spelling and written language. Although the IEP stated "His overall reading skills inhibits his ability to complete reading tasks," the IEP failed to include goals or objectives to improve his reading skills.

19. On February 7, 1994, James was re-evaluated by school psychologist Mitchell Bateman. According to this testing, between 1991 and 1994 James' Full Scale IQ dropped from 127 to 114. (Pa. Ex. 23).

20. According to Mr. Bateman's testing, on the Wechsler Intelligence Scale for Children, James' subtest scores ranged from the 98th percentile to the 5th percentile. On the Similarities subtest, which measures logical thinking and reasoning abilities, James earned a score of 16 (98th percentile). On the Coding subtest that measures visual-motor coordination, attentional skills, and short-term memory, James scored at the 5th percentile. (Pa. Ex. 23)

21. According to the testing by Dare County in 1994, James made little progress in reading. After three years of special education, he dropped from the 42<sup>nd</sup> to the 27<sup>th</sup> percentile in reading skills as measured by the Letter-Word Identification subtest. (Pa. Ex. 23)

22. According to Dare County's 1994 evaluation, James made little or no progress in spelling. After three years of special education, James dropped from the 42<sup>nd</sup> to the 8<sup>th</sup> percentile in spelling; he made two months of progress (from the 2.9 to the 3.1 grade level), as measured by the Dictation subtest. (Pa. Ex. 23)

23. According to Dare County's 1994 evaluation, James made little progress in written language skills. After three years of special education, James made 6 months of progress (from the 3.6 to the 4.2 grade level) as measured by the Broad Written Language composite. His score dropped from the 58 percent to the 16 percent level. (Pa. Ex. 23)

24. The Individuals with Disabilities Education Act (IDEA) and N.C.G.S. 115C-113(f) mandate that schools ensure parental participation as part of the IEP team. Goals and objectives must be developed before any placement determination is made.



25. At the Due Process Hearing, Linda Brody testified that only the Service Delivery Plans were completed at the IEP meetings. The school personnel completed all goals and objective sheets before the IEP meeting. The Service Delivery Plans state on the form itself that it is "[t]o be completed **after the IEP is developed.**" (Pa. Ex's. 12, 17, 21, 25, 27, 42, 53)
26. Appendix C of 34 CFR 300, Question 42 clarifies when placement decisions should be made.  
  
Question 42: When must IEP objectives be written -- before placement or after placement?  
  
IEP objectives must be written before placement. Once a child with a disability is placed in a special education program, the teacher might develop lesson plans or more detailed objectives based on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.
27. On May 31, 1994, three months after the February evaluation, Dare County developed an IEP for James' seventh grade year. (Pa. Ex. 27)
28. The May 31, 1994 IEP developed did not include objective information from Bateman's recent evaluation in the "Present Levels of Functioning." The IEP did not include annual goals or short term objectives that addressed James' deficits in basic reading skills, writing skills or spelling skills. (Pa. Ex. 27)
29. The May 31, 1994 IEP did not provide James with remedial instruction in reading, spelling, or written language. (Pa. Ex. 27)
30. In August, 1994, Dr. Kathleen van Hover, a Clinical Psychologist in Washington, D.C., evaluated James. Based on her own testing and a review of the earlier testing by Dare County, Dr. van Hover diagnosed James with dyslexia. (Pa. Ex. 31, 32, 33)
31. Dr. van Hover found that James' basic reading skills were at the fourth grade level (25th percentile.) His ability to perform basic math calculations was at the third grade level (9th percentile.) His basic writing skills were at the second to third grade levels (between the 3rd and 9th percentiles.) (Pa. Ex. 31)  
  
At that time, James was thirteen years old, the average age for an eighth grader. Despite an above average IQ, and despite several years of special education, he was now functioning between the second and fourth grades. He was falling further and further behind his peer group.
32. In her evaluation, Dr. van Hover recommended that James receive remediation in the form of "language therapy" and/or a "phonics based approach to reading and spelling mastery." (Pa. Ex. 31)
33. The parents paid for Dr. van Hover's evaluation, which cost \$1,000.00. (T2-217)
34. James' parents provided Dr. van Hover's report and recommendations to Dare County Public Schools in September, 1994. (T2-214)
35. Although Dare County now had new information confirming the severity of James' dyslexia and need for specialized remediation, they did not convene an IEP meeting to make changes to his educational program. James did not receive any remediation of his dyslexia. (T2-215)
36. On May 31, 1995, Dare County Public Schools developed an IEP for James' eighth grade year. (Pa. Ex. 42)
37. The May 31, 1995 IEP did not include objective information about James' Present Levels of Functioning in reading, spelling or written language. It did not include goals or objectives to improve James' deficiencies in reading, spelling, written language, or math computation. It did not provide for James to receive any remediation or language therapy. (Pa. Ex. 42)
38. The May 1995 IEP placed James back into the same "LD Resource" program where he had been receiving special education services. (Pa. Ex. 42)

39. During the summer of 1995, between seventh and eighth grade, James' parents placed him in an educational remediation program at Landmark School. The parents paid for the remedial program, which cost approximately \$5,500.00. (T2-216-217)

40. Landmark School is a private special education school in Pride's Crossing, Massachusetts that provides intensive remediation to children like James who have learning disabilities like dyslexia.

41. When James entered Landmark School, his Reading skills ranged between the 3.4 to 5.0 grade levels, as measured by the Woodcock Reading Mastery Test and the Gray Oral Reading Test. After six weeks of intensive remediation at Landmark, his scores in reading had improved substantially.

42. James attended Cape Hatteras Middle School for the eighth grade. He received no direct instruction or remediation of his weaknesses in basic reading, spelling and written language skills.

43. On April 12, 1996, Dr. Rebecca Felton, a nationally known expert in the field of learning disabilities, evaluated James. Dr. Felton reviewed all of the testing and IEPs developed by Dare County. (Pa. Ex. 54, Pa. Ex. 55)

Based on these tests as well as the results of prior evaluations, I conclude that James is a student correctly identified as having specific reading and written language disabilities or dyslexia . . . These problems are due to a combination of weaknesses in the language processing skills of phonological awareness and naming. (Pa. Ex. 55)

44. After reviewing the IEPs developed for James, Dr. Felton concluded that Dare County had not provided James with remediation of his deficient skills:

School and test records indicate that James continued to demonstrate significant deficits particularly in basic reading and writing skills in spite of special services for over five years in the public schools. Analysis of the Individual Education Plans indicates that much of that time was spent on teaching James higher level skills without adequately preparing him in the basic skills (word identification, decoding, and spelling.) After a summer of intensive work at Landmark, James did show significant improvements in basic reading skills. However, these skills were not reinforced and subsequent testing indicates that James has not fully mastered these skills. (Pa. Ex. 54)

45. Dr. Felton reported that James required a specific program of remediation that she described in detail:

James *requires direct, remedial instruction in basic skills of reading and spelling* . . . This goal can only be accomplished through *direct instruction in reading and writing in reading and writing* . . . *remedial instruction must be on a regular basis (daily or several times weekly)* with James either individually or in a small group where the other students are working on the same level (so the teacher can provide the direct instruction necessary) . . . *in an overall language arts curriculum designed to meet the needs of students with specific language based learning disabilities. The teacher must be well trained in the linguistic aspects of reading and spelling* as well as the specific methods being used. (emphasis added) (Pa. Ex. 54)

46. On April 20 and July 25, 1996, Dr. Rick Ellis, Licensed Clinical Psychologist and Certified School Psychologist, evaluated James. (Pa. Ex. 56)

47. Dr. Ellis reported that:

James' Composite IQ falls within the superior range of intellectual development. This score is equal to a percentile rank of 92 (better than 92 percent of students his age) (Pa. Ex. 56)

48. Dr. Ellis found that James was functioning "significantly below the range that would be expected given his ability" in reading and math. He found that James' skills in Dictation were "severely delayed." After he administered the Test of Variables of Attention (TOVA), Dr. Ellis diagnosed James with an Attention Deficit Disorder. (Pa. Ex. 56)

49. On May 30, 1996, Dare County Public Schools held an IEP meeting to develop an IEP for James' ninth grade



year. Dr. Rick Ellis and Dr. Rebecca Felton attended this IEP meeting. They provided the IEP Team with the results of their testing and their recommendations about what James needed in his special education program.

50. Several employees of Dare County Public Schools attended the May 30, 1996 IEP meeting, including Arlene Ward (guidance counselor), Dr. Bruce Sheppard (principal), Mitchell Bateman (school psychologist), and Karen Folb (LD teacher) (Pa. Ex. 57)

51. During the May 30, 1996 IEP meeting, Dr. Felton and Dr. Ellis advised the IEP team that James needed to master basic skills in reading, spelling, and written language. He required direct instruction and remediation. The Dare County IEP staff told Dr. Felton, Dr. Ellis, and the parents that Dare County does not provide remediation to students beyond the eighth grade.

52. In a letter to the parents, Dr. Felton discussed the IEP meeting:

Providing remediation is clearly not a part of the school's philosophy and Ms. Folb appears to be unprepared to provide such remediation. Without proper materials and an adequately trained teacher, the provision of an extra period each day for remedial instruction would be useless. (Pa. Ex. 54)

53. On May 30, 1996, Mr. and Mrs. Brody asked that Dare County to place their son in Landmark School where he could receive remedial instruction. The IEP Committee adjourned the May 30 meeting, without preparing a new IEP or addressing the parents' request to place James at Landmark.

54. Appendix C, Question 55 of CFR Part 300 clarifies questions about the IEP.

Question: Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

No. It is not permissible for an agency to present a completed IEP to the parents for their approval before there has been a full discussion with the parents of (1) the child's needs for special education and related services, and (2) what services the agency will provide to the child.

55. The June 11, 1996 IEP states that "Given individualized instruction by the except teacher in the TFS setting, James will . . . ." Although Mr. And Mrs. Brody were requesting that James be placed in Landmark School, according to the Service Delivery Plan, the only settings ever considered were "regular" and "resource" (Pa. Ex. 53) and the school's "Teaching for Success" program.

56. On June 11, 1996, Dare County convened another IEP meeting. During this June 11, 1996 IEP meeting, the school staff presented the parents with a "draft" IEP. This "draft" IEP did not include James' "Present Levels of Functioning" in reading, spelling or written language. It did not include any of the information provided by Dr. Felton and Dr. Ellis at the May 30 meeting. This "draft" IEP failed to include any goals or objectives to address James' deficits in reading, spelling and written language. (Pa. Ex. 53)

57. The June 11, 1996 IEP did not provide for James to receive direct instruction or remediation in his deficient areas of reading, spelling or written language. The IEP **reduced** James' special education services by half, to five 52-minute periods, or less than five hours per week. (Pa. Ex. 53)

58. During the June 11, 1996 IEP meeting, the parents asked Dare County Public Schools to place James at Landmark School where he could receive the remediation that he needed. The IEP team did not directly address this request, made no changes to the IEP, and advised the parents that if they wanted to "challenge" any part of the IEP, they should do so in writing. (Pa. Ex. 57)

59. The parents "challenged" the IEP, and wrote on it that they "don't agree." (Pa. Ex. 53, page 2)

60. On August 6, 1996, Mr. and Mrs. Brody sent a letter to Terry Jones, Director of Exceptional Education for Dare County Public Schools. In their letter, the parents re-iterated their position that the proposed IEP did not provide James with an appropriate education and asked Mr. Jones to respond to their request to place James at Landmark. School for the 1996-1997 academic year. (Pa. Ex. 57) If Dare County was unwilling, then the letter was a request for a due process hearing.

61. In their August 6, 1996 letter, the parents wrote: "... if you are willing to grant our request, please let us know immediately so we can begin to make arrangements with Landmark." (Pa. Ex. 57)

62. On August 16, 1996, Mr. Jones responded that the school would reconvene an IEP committee and/or mediation as a means of attempting to reach agreement. He did not respond to their request about Landmark. (Pa. Ex. 58)

63. On September 11 1996, Mr. and Mrs. Brody wrote a letter to the principal of Cape Hatteras High School and explained why James was not returning. They stated that that they were withdrawing James from Dare County Public Schools and placing him into Landmark School. (Pa. Ex. 59)

64. The Petitioners filed a preliminary Motion for Summary Judgment. The School Board filed a Response with attached affidavits.

65. A Special Education Due Process Hearing was held in Buxton, North Carolina, The Honorable William A. Creech presiding. He heard testimony over a period of six days, April 29, April 30, May 1, May 5, May 6, and May 7, 1997.

66. At the onset of the Due Process Hearing, Judge Creech advised that he would take the Parents' Motion for Summary Judgment under advisement.

67. After opening statements on April 29, 1997, the first witness to testify at the Due Process Hearing was Dr. Rebecca Felton.

68. Dr. Felton has taught and/or diagnosed students with learning disabilities since graduating from Duke University in 1966. Between 1975 and 1995, she worked as a researcher and clinician at the Bowman Gray School of Medicine in Winston-Salem. She continues to work as a consultant at the Bowman Gray Schools of Medicine on research and clinical issues. Beginning in 1983, Dr. Felton participated in the extensive research on reading disabilities and attention deficit disorder sponsored by the National Institutes of Health. (T1-30)

69. Dr. Felton testified that she has been involved in developing hundreds of IEPs for students over the past 20 years. (T1-96) She has consulted with several school systems about teaching methods to use with children who have reading disabilities. (T1-96)

70. Dr. Felton described effective instructional practices to use with language based problems. She emphasized that with appropriate instruction, "the majority of individuals, even those with severe reading problems, make good progress in becoming proficient readers, spellers, and writers." (T1-36) She reported that although there is no real "cure" for dyslexia, "dyslexic readers can be remediated, can function as proficient readers and spellers and writers with appropriate instruction." (T1-37)

71. Dr. Felton testified about the "Matthew Effect":

And what that term means is that individuals who have difficulty learning to read, and whose reading problems are not remediated effectively early in their school career, often remain significantly behind their peers in reading skills . . . If an individual fails to learn well in first, second and third grade - and first and second grade are really the critical periods - then what happens is that these individuals don't read the amount of material that's necessary to continue to develop good reading skills. (T1-45-6)

72. Dr. Felton defined the use of "remediation" in a child's IEP:

Remediation simply means an area that a child is deficient in and needs instruction in to correct that deficiency, so, to me, that's the essence of what an individual education plan is all about. It's all about skills that individuals are deficient in and how we go about developing those skills to the point that those individuals can function independently. (T1-58)

73. Dr. Felton testified about her initial involvement with James Brody:

. . . I was first asked to . . . give an independent assessment of his strengths, weaknesses in



reading and writing and to make, if necessary, recommendations for instruction . . . I was first asked to review the records and determine if the type of testing that I do would be useful in formulating recommendations, which I did. And then I tested him and was asked by his parents to come to a meeting . . . it was May of '96 - at which my understanding was . . . an individual education plan was to be developed for him for the coming school year, which would be his ninth-grade year. (T1-59-60)

74. Dr. Felton described the recommendations she made to the staff at Dare County:

. . . the test results that I had obtained, as well as the test results in the past from many assessments, indicated the need to include in his individual education plan direct instruction that would address his basic skills weaknesses . . . I made that statement at the May '96 meeting, initially.

Q: What else did you tell them that James needed?

A: At that meeting?

Q: Uh-huh.

A: I told them that he would need practice in reading, in using materials that were appropriate for his reading level so that he could develop fluency; that would also need direct instruction in all aspects of writing, because that was clearly a very deficient area for him . . . it was a combination of direct remediation of skills he was still deficient in, as well as strategies, as well as modifications. (T1-60-61)

. . . .

Q: When you attended the IEP meeting in Dare County, you told them that James needed remediation; am I understanding that correctly?

A: That is correct.

Q: And what did they tell you about remediation?

A: The strong, often-repeated statements, both by Ms. Fold and by the school psychologist, were that the emphasis, the strong emphasis in high school is on giving a student the support the student needs to be successful in content classes and not on remediation. In fact, the statement was made by the school psychologist that one has to make a choice in high school. The choice has to be between giving the student the help they need to pass the content courses so they can graduate on time or trying to continue to remediate . . . (T1-62-63)

75. Dr. Felton was asked about LD Teacher Folb's assertions in her affidavit that she could provide James with remediation:

I did ask her at the meeting what - in three specific areas what she would do for remediation with James. These were the areas that I had identified that James needed continued remedial work in, word identification, word analysis, and spelling. Those were the things that I focused on particularly.

She - when I asked her what she would use to teach word analysis skills, she told me that she did not have any particular programs or methods in mind. She could name no methods or programs . . . I was asking Ms. Folb what kinds of things do you use to teach word analysis skills when you see a student who has difficulties in this area, and she simply was unable to give me any information about what she would do in that area. (T1-66)

(Later)

She did make a statement, my notes reflect, that she'd be happy to discuss with me any

specific recommendations. She was very gracious, and I think she meant that. (T1-67) . . .

In fact, after the meeting, on the way out of the building, Ms. Folb spoke to me very cordially, said she appreciated any information I could give her and I certainly had no hint at all that she experienced this as a negative situation. (T1-69)

76. Dr. Felton provided additional testimony about the May 30, 1996 meeting at Cape Hatteras School. She said she was advised that high school students were placed in content courses so they could learn the same material as regular education students and that the "resource" program, called "Teaching for Success" (TFS), was designed to support students, not remediate them. (T1-70) She was told that children like James who had spelling problems were not taught how to spell but were provided with a "spell check" program. Dr. Felton was of the opinion that with the Teaching for Success program, the LD teacher's job was to help children with organization and assignments, and that the TFS program was not designed to remediate basic skills. (T1-71)

It [remediation] was simply not a priority, nor did it appear to me that she knew how to or had the skills to teach the basic reading and spelling and writing skills that I felt and others felt James needed. (T1-72)

77. Dr. Felton testified that Guidance Counselor Ward suggested that James might be able to get a Certificate of Attendance, instead of a diploma.

I was frankly very stunned by this comment by Ms. Ward, who is the counselor. She was basically saying that one option is for James to leave high school with just a certificate of attendance rather than an actual high school diploma . . . I found it astounding that someone who had sat in the meeting and listened to what Dr. Ellis had presented about James' ability would make such a recommendation. (T1-72-73)

78. Dr. Felton testified that at the May 31, 1996 meeting, the principal and school psychologist insisted that James' "good grades" was evidence that the school had met his needs. She disagreed with this, and asserted that a student's grades are only one piece of information and that James' grades were lower than would be expected, given his ability. (T1-75-76) She testified that testing that measures the child's basic skills is also necessary:

And those tests certainly indicate that there remain some serious deficiencies that will impact James's ability, even with help, to function independently in high school, and certainly, beyond which, for a student of his ability, is a reasonable expectation. (T1-76)

79. In her written report (Pa. Ex. 55) and her testimony at the Due Process Hearing, Dr. Felton expressed serious concerns about James' very poor spelling skills and the impact these inadequate skills will have on him later in life:

James is a person who should go to college if he chooses to; intellectually, that's certainly within his realm of possibility. And the kids of spellings that he's producing are simply not acceptable for a person who is going to be functioning not only in college, but out in the working world.

In my opinion as a clinician, it is not acceptable to simply tell a student like James to rely on spell check . . . [it] raises a possibility of whether James would be able to tell what the correct spelling was . . . He still spells the word sure, which is a very high frequency word - he spells it S-H-O-R-E. He didn't know how to spell the word awful or the word nineteen. (T1-79)

80. Dr. Felton testified about the IEP developed by Dare County for School Year 1996-1997. (Pa. Ex. 53) She testified that IEPs must include a statement of "Present Levels of Educational Performance" that will provide teachers and parents with information about where the student is functioning, that this information "needs to be presented in a way that is easily understood and in a way that can be evaluated." (T1-88) She testified that IEPs usually include information from current testing including test scores. (T1-88)

81. In her report (Pa. Ex. 55) and at the Due Process Hearing, Dr. Felton stated that Dare County's IEP (Ex. 53)



did not represent an adequate program for him. (T1-94)

Q: What was actually needed in an IEP for James for it to be appropriate . . .

A: Direct instruction in reading and writing skills, including spelling, as outlined in my report.  
(T1-94)

Dr. Felton asserted that IEP goals should be measurable and should relate to the progress or skills the student will master during the academic year.

. . . [goals] would relate to what kind of progress he's expected to make in that particular area during the school year . . . could be expressed in terms of grade equivalents; it could be expressed in terms of a standard score; could be expressed in terms of percentile; could be expressed in terms of the particular content he would master. (T1-94)

82. Dr. Felton advised that in her professional opinion, Landmark School was an appropriate placement for James Brody. (T1-101) She based her opinion on her professional contacts over many years and her own personal observations of James at Landmark in November, 1996. (T1-102) She testified that the school emphasizes remediation of basic skills and has a very low teacher/student ratio. (T1-104)

. . . the emphasis at Landmark is on teaching students of average to above average ability, intellectual ability, like James, the actual reading, writing, math skills that one needs to be an independent student in an academically challenging environment. So their focus is strongly geared toward teaching students to be good spellers, to be good readers, to be good writers. (T1-104-105)

They purposefully and thoughtfully de-emphasize compensatory help . . . they still insist that students actually learn to write, even write by hand more than some education programs would consider important. (T1-105)

They certainly insist on correct punctuation, grammar, spelling. Writing skills are a big focus at Landmark, as are study skills . . . They've developed a manual that is a model for study skills instruction throughout the country. (T1-105)

83. Dr. Felton testified about the two programs in terms of educational benefit and appropriateness:

Q: In your opinion, the public school's proposed IEP, would James have received educational benefit from that?

A: I certainly think he would have received some educational benefit. I do not think it would have been appropriate to meet his needs.

Q: The program at Landmark, do you believe that he is receiving educational benefit from that?

A: Yes, I do.

Q: Taking it a standard higher, the program at Landmark, how close does that come to helping James reach his potential?

A: In my opinion . . . the program at Landmark is designed as - to be as effective as one possibly can in that regard. I think it is an appropriate combination of remedial help, utilizing an intensive one-on-one tutorial setting using materials and approaches that . . . certainly reflect current research in the field and, in addition, presenting him with content area material at his intellectual level. (T1-107-108)

84. Dr. Felton offered her opinion that James requires continued educational help:

. . . I do not think that James is finished . . . instruction in basic skills will need to continue in order for James to be able to function independently at his intellectual level. And I am, frankly, pleased in North Carolina that we have the expectation that students who are bright should be able to function at their intellectual level. (T1-110-111)

85. On cross-examination, Dr. Felton clarified her recommendations about direct instruction and the meaning and significance of the various skills, such as word attack skills, word analysis, decoding, spelling, and phonological awareness. (T1-115)

86. In response to questions by school board counsel, Dr. Felton explained that the passage comprehension subtest of the Woodcock Johnson is not an adequate measure of reading comprehension abilities. (T1-126) Dr. Felton testified that the North Carolina testing completed on eighth grade students is suspect.

. . . to my knowledge, and I have asked for this information from the Department of Public Instruction, but to my knowledge, no data exists concerning the relationship between what North Carolina calls eighth grade reading competency and any other standardized nationally-normed measures. (T1-130)

87. On cross examination, Dr. Felton testified that James' progress in Word Attack skills after attending the summer program at Landmark was "substantial progress" but "not that uncommon" in children who have been immersed in an intensive remediation program. (T1-141)

88. Counsel for Dare County asked Dr. Felton to elaborate on what skills needed to be remediated:

Q: What - what basic skills besides that - besides the ones identified have you - do you say that he needs work on? I'm sorry; I'm not sure I understand what your testimony was.

A: My testimony is that he needs to work on decoding skills . . . with the goal of being able to accurately read multi-syllable words at a level commensurate with James' intellectual level so that he can read text and material appropriate for him. That's one area. (T1-168)

89. Dr. Felton testified that teachers often abandon phonics programs with dyslexic children like James because they do not know to start with phonological awareness skills or how to do intensive sequential, decoding skills instruction. (T1-170) She testified that North Carolina certification does not require LD teachers to know how to teach these children to read, spell and write. (T1-174)

Q: So you think teacher training is a critical element of properly remediating the skills deficits in learning disabled students?

A: Definitely. Teacher training and appropriate, proper materials and proper setting in which to carry out instruction are all critical components. (T1-175)

90. On cross-examination, Dr. Felton testified that the initial training, in-service training sessions, and ongoing supervision that Landmark teachers receive seems adequate to enable them to teach effectively. (T1-183-184)

91. Dr. Felton clarified her views on regression and James' minimal progress while in Dare County special education -- that in spite of special education, the gap between him and his peers widened over time.

Q: It means that they're not progressing as fast as their peers; is that correct?

A: It doesn't mean simply that. It means they're getting - in relationship to their peers, they're further behind now in an area than they were at a previous point in time.

92. On cross-examination, Dr. Felton testified that there was no support for providing remediation to children with reading disabilities in an inclusion model. (T1-211)

93. On re-direct, Dr. Felton reiterated her position that based on her evaluation and review of his previous testing

and IEPs, Dare County Public Schools did not provide James Brody with an appropriate education. Based on his ongoing skill deficiencies, she concluded that "the level of instruction and focus of instruction had not been appropriate to meet his needs." (T1-217) She testified that "talking books" may be used as an aid or tool, but "not as a substitute for teaching the child to become an independent reader." (T1-217)

. . . it is my opinion that it is not sufficient for us to produce students who can pass social studies tests if tests are read to them . . . We want him to leave high school being able to read and function at college, and society is demanding higher levels of people when they leave college . . . so basic skill instruction has got to be part of what we provide students who get to high school without these skills. (T1-218-219)

94. Dr. Felton testified that when James entered Landmark School at age thirteen, his oral reading rate was below the first percentile, his reading accuracy was at the ninth percentile, and his oral reading was at the second percentile level. She testified that when he entered the intensive six-week summer program at Landmark, his skills were at the third, fourth to fifth grade levels in reading. After the Landmark summer program, James' reading skills improved by nearly a year. (T1-223-224)

95. The second witness to testify was Dr. Rick Ellis. Dr. Ellis is a clinical psychologist and certified school psychologist. He worked as a school psychologist for 15 years before entering private practice. He has evaluated between one thousand and fifteen hundred children for learning disabilities, emotional problems, mental retardation, and language problems. (T2-3) He consults with Chesapeake Schools and Old Dominion University. (T2-5) He has published articles on research on educational assessments, educational remediation, and educational programming. (T2-6)

96. On direct examination, Dr. Ellis testified that the "Matthew Effect" is a term that describes an apparent loss of intellectual abilities when a child does not receive an appropriate education:

. . . if a child is not presented with adequate educational opportunities or does not have requisite reading or math skills . . . there's a decline in those overall cognitive abilities, intellectual skills as time goes on. (T2-12)

Q: Then if I'm understanding you correctly, the Matthew Effect, the IQ score can go down over time?

A: Yes. IQ score or tests of cognitive abilities decline over time because they - the child is not provided with the skills and abilities to benefit from learning in different areas. (T2-13)

97. Dr. Ellis testified about the emotional toll on learning disabled children if the education they receive is not appropriate.

They often feel lost and frustrated, anxiety problems develop, depression-related difficulties develop, behavior problems. They become more difficult in the classroom; they turn off to the learning experience . . . Children often suffer from the emotional side effects of improper academic instruction, and it begins a downward spiral so they become less and less involved in the learning process, often resulting in dropping out of school, trouble with the law, because they aren't getting their needs met in the educational environment. (T2-15)

98. Dr. Ellis testified that on the Detroit Test of Learning Aptitude, James' score of 125 placed him at the 95<sup>th</sup> percentile. The 95<sup>th</sup> percentile placed James in the superior range on this test. (T2-23-24)

99. Dr. Ellis conducted two comprehensive psychological evaluations on James. He assessed James' intellectual ability, academic achievement, visual motor functioning, attention deficit disorder, behavioral and emotional functioning. (T2-31)

100. Dr. Ellis completed his first evaluation of James on April 20 and July 25, 1996. On the Stanford-Binet Intelligence Scale, James' Full Scale IQ was 122. In Verbal Reasoning, his composite score of 119 placed him in the upper end of the high average range. His abstract visual reasoning score of 123 placed him in the superior range. His Quantitative Reasoning or mathematical reasoning ability was at the 98<sup>th</sup> percentile (standard score of 134) which placed him in the very superior range. (T2-34-35)



101. Dr. Ellis testified that James has been tested on one of two forms of the Wechsler Intelligence Test for Children on four separate occasions. (T2-40) With each administration of the Wechsler, James' Full Scale IQ score dropped. In 1991, James' Full Scale IQ was measured at 127 (96<sup>th</sup> percentile) (Pa. Ex. 7) When Dr. Ellis evaluated him in 1996, his Full Scale IQ had dropped to 103. (T2-12)

102. Dr. Ellis testified that he administered the Woodcock Johnson test to James and found "significant gaps in his learning or his abilities." (T2-48)

In Broad Math, his standard score was 111, with a percentile of 76 . . . [in Broad Written Language] his standard score was 90, and his percentile rank was 25. [On the Dictation subtest] . . . Standard score was 80, percentile was nine. (T2-48-49)

103. In April, 1996, Dr. Ellis evaluated James' emotional status and found many areas of concern, including signs of anxiety, depression, and social problems. Many of James' scores were above the 90<sup>th</sup> percentile. (T2-53-54) When asked to summarize James' in terms of emotional issues, Dr. Ellis testified that:

That he had a lot of problems. He had moodiness. He had difficulties complying with requests at - by his parents. He was impulsive . . . negative self-statements, statements related to depression. (T2-57)

104. Dr. Ellis testified that he attended an IEP meeting in Dare County with James' parents. He presented his test results and a draft of his report to the IEP team. He testified that he and Dr. Felton made recommendations:

We recommended that James receive instruction and assistance in the areas in which he was deficient, particularly his reading and written language. (T2-58)

105. Dr. Ellis testified that books on tape might be used appropriately with some children with disabilities:

Well, predominantly, the blind children, and sometimes with children with severe, severe language or visual processing, or any handicap that would make the - it impossible or near impossible for them to benefit from the written text . . . For James, I feel that he is able to learn to read and books on tape would only give him a crutch . . . that there his more to be gained interpersonally, educationally from the actual reading experience, as opposed to a book on tape or an accommodation such as that. (T2-60)

106. Dr. Ellis tested James a few days before the Due Process Hearing. He found that James' skills, especially in Written Language, were variable. In Dictation, his standard score was 75 and percentile rank was 5. On Writing Samples, his standard score was 134 and percentile rank was 99. (T2-62)

107. Dr. Ellis was asked how James' skills have evolved since he entered Landmark School a few months earlier:

I think it's provided him with academic growth at a greater degree than he was provided before that time. I think his nonacademic factors are better. He appears more positive about school. He states that he likes it there. He doesn't like the amount of work and the structure, but I think he acknowledges that it's what he needs. (T2-66)

108. Dr. Ellis testified that Dare County's IEP that proposed continuing James in the "LD Resource" program was not appropriate. (T2-68-69) He explained why:

I don't think continued placement in the resource setting would have been appropriate for James, due to the extent of his reading and written language difficulties. (T2-68)

Q: Do you believe that Exhibit 53, Public School's Proposed IEP, is appropriate for James.

A: No, I don't. (T2-69)

109. Dr. Ellis testified that the IEPs were not properly drafted in that they did not have goals and objectives written in measurable terms. (T2-71)

110. On cross-examination, Dr. Ellis was asked about the "re-norming" of the Wechsler Intelligence Scale for Children.

Q: Okay. Isn't it true that when the test was renormed for the revision that all the test score of all the children dropped?

A: No.

Q: Okay. So you're not saying that there was an expected drop in IQ score between the two tests?

A: Some children's IQ's dropped and some didn't. (T2-76)

111. Dr. Ellis explained that the change was not predictable and that while some children's IQ scores went up, others dropped drastically. (T2-78) He testified that psychologists are debating the significance of these changes and that he usually does not use the Wechsler Intelligence Scale because he thinks it is a less reliable test for the children he sees in his practice. (T2-82) He also testified that the number of school psychologists who use the Wechsler is declining as better tests come out. (T2-83)

112. On cross-examination, Dr. Ellis testified that James' strong gain in skills while enrolled in the summer program at Landmark was not unusual if the child is involved in private tutoring or intensive remediation. (T2-116)

113. Dr. Ellis testified about the reasons why the Wechsler Intelligence Scale did not provide a valid estimate of James' intellectual ability. (T2-127) He also testified that James did not get a ceiling level on two of the Binet subtests, which suggests that his potential may be even higher than the Binet indicated. (T2-166)

114. On cross-examination, school board counsel advised Dr. Ellis that Dr. Felton favored using books on tape:

Q: are you aware that Dr. Felton testified yesterday she thought that [books on tape] would be a useful tool for James in the - for his regular classroom content courses?

A: No, I wasn't aware of that.

Q: Would you disagree?

Objection:

Q: If Dr. Felton --- did indeed testify that she thought books on tape would -would be helpful for James, would you disagree with that?

A: I think helpful would be a relative term. I think he really needs to develop those skills in reading. I think, you know, watching a video of something would be helpful to someone, but that's not going to give him the skills and abilities that he needs to be successful for the rest of his - his high school, an if he goes on beyond that . . . I don't see that as the answer for James.

Q: So to the extent that other professionals have recommended that, you disagree that that would be -

A: No, I said it would be helpful but - but I don't think in the long run it would be beneficial for his long-term career, or long-term educational program and career. (T2-144)

115. On cross-examination, Dr. Ellis testified that at this time, James needs to attend a residential school. (T2-145) He clarified his statement:

The statements from school staff at that meeting were that they were not able to provide him any remedial services in that setting, that - I believe --- hearing the words "we're not set up for that," that it was not part of the Hatteras School special education delivery model to include the necessary remediation services that would be appropriate for James. (T2-145)

116. Appendix C and Regs state who has to be at the IEP meeting - child's teacher!

117. School board counsel asked Dr. Ellis several questions about who attended the May 1996 IEP meeting:

Q: But none of his teachers who had taught him in the past were available, or were at that meeting, on the day that you went, isn't that true?

A: School board counsel asked Dr. Ellis about Dare County's proposed IEP:

Q: Have you determined, what, if any, instructional remedial - remediation strategies are contained within the IEPs?

A: I recall some organizational skills and support for his academic subjects.

Q: That's all?

A: Yes.

118. Dr. Ellis testified on cross that he has worked with three individuals who attended Landmark and disagreed with school board counsel's attempt to characterize Landmark School as a "methodology."

I think Landmark is an overall program, and peer culture even, if you would, where the emphasis is on creating positive educational outcomes. I've evaluated one child who subsequently went to Landmark. . . . he [went] to great lengths to attend Landmark College, and he described that experience as the best experience of his life . . . there's a lot more there to help him make up the lost ground, his areas of deficit, and it would provide him that opportunity. (T2-155-156)

119. On cross-examination, Dr. Ellis testified that he was involved in another Dare County special education case.

Q: Have you ever been to the Dare County Schools beyond that one IEP meeting that you went to?

A: Yes. A few years ago, I evaluated another Dare County child and conducted my evaluation and sat in on an IEP conference, took a tour of one of the schools, made a recommendation for an out-of-state placement for that child, and that recommendation was followed through with. (T2-157)

120. On re-direct, Dr. Ellis testified that there was no discussion about changing the IEP after the IEP team heard input from Dr. Felton and him. (T2-159) He was asked his thoughts about "mainstreaming" James into high school.

I think that at the time he had a very strong emotional component against going into the regular classes because of his continued difficulties, and that without feeling any progress or feeling like he was getting ahead of the game educationally . . . that was going to continue to be aversive to him . . . he had shared about the other kids making fun of him . . . it was a very frustrating experience for him to be in a regular classroom . . . there was an anxiety component, a depressive component. He wanted to give up often. (T2-159-160)

Q: Had James been mainstreamed, in your professional opinion, what would have happened to his emotional state?

A: It would have continued to deteriorate. (T2-160)

Q: Did you hear a proposal about not getting a high school degree and getting a



certificate instead?

A: Yes.

Objection.

Q: In your professional opinion, for a youngster who had an IQ that tested at 127, do you believe it's appropriate to spend another year in high school in order to be taught how to read, or to waive the right to a high school diploma?

A: No. Because in my experience, I've seen children with significant learning disabilities function at the top of their class, which is where James' expectations are, given his ability . . . (T2-161)

121. On re-direct, Dr. Ellis testified that, during the summer program at Landmark, James made ten months of gain in reading skills, as measured by the Gray Oral Reading Test. (T2-178) He characterized this gain as "typical for a child receiving intensive remediation in a structured setting by well-trained staff. It's common." (T2-178)

122. On re-direct, Dr. Ellis was asked again about the renorming of the Wechsler. He agreed that between 1991 and 1994, James' Full Scale IQ score dropped from 127 to 114.

Q: Now, he was given the WISC III again, though. He was given it by you in July of '96, and he went from 114 to what?

A: 103.

Q: And how much renorming of the WISC III to the WISC III was done during that period of time?

A: None

Q: Was that the same test?

A: Yes.

123. On re-cross, Dr. Ellis was asked about discrepancy formulas. He testified that using an IQ score of 103 for James when he had previously scored 127 was unprofessional.

124. Using a chart that had James with a Full Scale IQ of 103 and "an achievement score of minus four in reading," school board counsel attempted to "prove" that James no longer had a learning disability.

You know - the assumption of your chart and your discrepancy is that his IQ - that he's gotten -he's become a dumber child since 1991. I don't think James has gotten dumber at all since 1991 so using those numbers I think is totally inappropriate . . . so saying that James has gotten dumber and just because the IQ test score has gotten down and he doesn't need a learning disabilities program is ludicrous. (T2-191)

125. Dr. Ellis testified that psychologists should use "the best estimate" of the child's IQ and his ability. He testified that it is inappropriate to use a discrepancy model to deny services to children:

. . . You could give that test to a blind child, and there wouldn't be any discrepancy at all or a child with a hearing disability and it would be inappropriate. You know, my belief is that you try to find the best estimate of potential; you use that as your IQ. You don't get the lowest scores you can get and then use that to compute the difference. (T2-193)

126. The next witness to testify was Linda Brody, James' mother. Mrs. Brody testified about James' problems, beginning in Kindergarten with reversals and inability to learn his ABC's. She recalled that in Kindergarten, James "started to

avoid doing things because he was afraid of failing." (T2-202) Because of these problems, his parents placed him in the Island Academy for the next two years. By the end of second grade, they decided to return him to the public school program. (T2-202)

127. Mrs. Brody testified about her reaction to the psychological evaluation by Mr. Bateman in 1991:

I was very relieved. I knew that my son was very bright just by what he did at home and the building and stuff, and I was very relieved that he had a learning disability because it would make sense of why things weren't consistent or - or what was going on . . . So, I was - I was happy. I - you know, you've got a problem and you identify it, in my view, and you fix it . . . (T2-206)

128. Mrs. Brody testified that by fourth grade, James' classmates were making fun of him because he was "pulled out" of class.

He said some of his friends had told him he must be retarded since he was going to class with retards. And I told him, no, everybody needed help, but his friends insisted that it was a retarded class . . . kids being kids, you know, knew that there was a retarded child in the class and assumed that everybody was retarded . . .

129. Mrs. Brody testified about James' fifth grade year:

That was the worst year . . . things became more difficult. He began to feel real bad about himself, and he really felt something was wrong with himself . . . he wasn't believing that everything was all right. And there were many nights that - a lot of times he couldn't even finish the work in school, let alone his homework . . . he was ten years old, we'd be up like three or four hours and scribing and reading for him.

And at that time . . . I didn't do any of the work for him. I mean, I made him work, and he was just exhausted. I mean, he just dreaded it. He would go to his bedroom and cry, say he was dumb. He - he wanted to kill himself that year. It was one of the worst years I've ever gone through in my life. His teacher was horrible - his fifth grade teacher. She would make fun of him in front of other people, in front of the classmates. (T2-210-211)

130. Mrs. Brody testified about her attempts to get books on tape for her son:

The load was so hard at night with us reading for James and scribing for him. I thought that maybe if he could get books on tape that things would be just a little bit easier and he'd be a little more independent of me or his father . . . that's what you do when you get older is you get independent . . . when we got to the sixth grade, there were no books on tape. (T2-211)

131. Mrs. Brody also testified about her son's re-evaluation and learning that his scores were dropping.

When I went into that meeting, I was going in really excited because two of the teachers told me that great progress had been made . . . and when they told me that his IQ dropped 25 points . . . I just was shocked. I - everything --- I mean, it was just like my stomach fell out. I just couldn't imagine what happened to my son, what is going on here.

I felt desperate, scared, didn't know what to do. I thought we were fixing something . . . there's a problem, I can fix it, I was scared and shocked. And I asked Mr. Bateman why - why the - what the drop - why there was a drop . . . and I didn't get any real explanations as I'm getting today at that time.

I noticed that there was a difference in the WISC-R and the WISC-III, and I said are they different tests. And he said no, they're just re - renormed or - but he said something else - you know, redone test. (T2-212-213)

132. Mrs. Brody testified that after this, she had another evaluation done on her son from the Lab School in Washington DC. She shared the results of this evaluation with her son's LD teacher. (T2-213)

133. Mrs. Brody testified that in fifth grade, James became suicidal:

Q: . . . Had he ever – had your son ever admitted to you thoughts of killing himself? You can't—

...

A: To me, he wanted to die.

Q: You need to answer the question. Did your son discuss with you any thoughts of killing himself?

A: Yes . . . He would come home and he would go in a room and he was so very agitated, and he would just want to throw things around, and just wanted to be dead. He just wanted to be dead, what was the use of it all. And it scared the heck out of me. And I – at that time, I cried, I held him, I told him it would be all right, it would get better, we'd work together, I'd fix it . . . (T2-214-215)

134. Mrs. Brody testified that she provided this Lab School evaluation to Dare County. Dr. van Hover recommended that they get a Speech Language evaluation on James. The parents followed through with that. (T2-215)

135. As she continued to read about dyslexia, Mrs. Brody learned that dyslexic children needed to be taught differently. (T2-216) In her reading, she learned about Landmark School and decided she had to find a way to send James. She testified about the changes in her son after his summer at Landmark:

He was no longer hunched over. He was talking. He was laughing. The best thing was he called me two weeks after being there and said, hey, listen to this Mom and he said, Sunday, Monday, Tuesday, Wednesday, Thursday, Friday. The child could never say this ever . . . to hear him be so thrilled that he could say this and that he could learn . . . it was so wonderful. I – it was the best thing. It wasn't the scores; it was his self confidence and his just pure happiness. (T2-218)

136. Mrs. Brody testified about signing IEPs and her parental role:

Q: What was your understanding about the significance of signing the IEP?

A: It just meant that you were present.

Q: That was your understanding, it was you – present and accounted for?

A: Uh-huh. And they tell you that very – they'd say, well, just go ahead and sign this; it doesn't mean you agree, just that you were present. They – every IEP I've been to they've said that.

Q: I see . . . did they ever give you the rules, the North Carolina regulations.

A: In 1991.

Q: You remember getting a copy of the regulations?

Q: When was the last time you got a copy from the county?

A: In our IEP meeting with Terry Jones in June. I can't think of the date. June.

Q: And . . . what was the date on the inside of the book?

A: 1993.

Q: Is there any doubt in your mind it was the '93 and not the – 94 book.

A: It was a 93 because I've never seen a 94.



137. Mrs. Brody testified about the May 30, 1996 IEP meeting:

When I got there, I was not prepared that they were going to drop one - he had two pullouts all this time, and they dropped one for high school. I think the high school policy is not to put them - only one pull out class a day. TFS is all they give for LD. I think that's right. But I was shocked at the reduction. And I was scared because we were going to high school now . . .

138. Mrs. Brody testified about the changes in her son since he entered Landmark in September, 1996:

James --- James is entirely the real James now . . . he is a kid. He's easy to get along with. He likes interacting with people. He's not afraid to talk to people in case he says something wrong. He's sure of himself. He has interests. He has friends. He's learning. The first couple of months . . . he was pretty miserable, you know, truthfully. He missed home.

He was mad. He was mad that he could learn, and why couldn't he learn like that and stay home. He and he I mean he was happy that he could nod it - why can I learn here and I couldn't there. And - and we talked that out. They didn't have it here but we've dealt with that now.

Q: You asked for Due Process Hearing in August and your son was not in Landmark. What happened?

A: Financially, we couldn't do it. No. Zander got some information . . .but he also called his grandmother and his mother, and I called my sister and they all gave us - made loans. And they're not gifts, they're loans. Since then Zander and I have remortgaged the house. I've cashed in my retirement. I've cashed in Zander's life insurance. I've maxed out the credit cards. And I've taken loans out from my credit union. So we're we've gone all the way to get him there this year, to keep paying.

139. On May 1, 1997, James Brody was the next witness to testify.

140. He testified that attending Landmark has changed his attitude about school because he is being educated with other children who have similar problems - children like him. After a week at Landmark, James realized that he really was not stupid.

141. He described the summer program at Landmark, including his schedule and the things he studied in his one-on-one tutorial and language arts classes. He said that after he completed the Landmark summer program, he felt more sure of himself in language arts and pre-algebra. After Landmark, he finally understood that he was dyslexic but he could cope with it. He told his parents that he wanted to go back to Landmark.

142. When he returned to Dare County Public Schools for the eighth grade, nothing changed. He began to dread going to school. He testified about taking the North Carolina standardized testing and said that he did have modifications. He said that he took the competency test in Ms. Hinton's class. She helped him with the questions on the competency test and how to understand them.

143. James testified about his experience at Landmark during the past school year. He said, "Landmark was hard" because he did not have anyone to scribe for him as he had in the public school. He was required to do his own writing!

144. The staff at Landmark worked with him on reading and writing skills. In Language Arts, he is working on writing multi-paragraphs and compound sentences. In his tutorial, he is working on rules of sounds with vowels. He testified that he never had work on sounds before.

145. James testified that he spends about one and a half-hours a night on homework. No one helps him with his homework.

146. James also testified about his adjustment to Landmark. He said that the first month was tough because he was

homesick. When asked about mainstreaming issues, he did not agree that he needs to be back at public school with regular students. He said that Landmark is "tougher" and he has a lot more work but he still wants to return next year.

147. When asked about his future, James testified that he has a lot more possibilities. "I could be more than I was . . . I can write more." He said that he is more optimistic now and socializes better. He no longer feels like he an "outcast."

148. Dr. Wendy Levin was the next witness to testify.

149. She was the first witness to testify for Dare County Public Schools. She was not excluded as a witness.

150. She is associate director of a diagnostic teaching clinic that receives many referrals from school systems around the state. She does assessments and develops programs. She estimated that she does from 200 to 300 evaluations per year.

151. Before the hearing, Dr. Levin never met or talked with James, never tested him, and never attended any IEP meetings about him. Although she trained as a teacher, diagnostician, and school psychologist, she is not and never has been a teacher or a school psychologist. She has no background in research. She testified that she received her doctorate in May 1996. She became certified as a school psychologist in October, 1996.

152. Dr. Levin testified that she recommends programs that can be implemented in public schools. When she develops a program, she tries to balance the needs of the school and the needs of the child. She discussed a Challenge and Champions program for children who lack basic and applied skills. She testified that she uses a "mainstream/ inclusion model" that is not specifically geared for children who have learning disabilities. This model allows for maximum opportunities for integration. The Challenge program is a three-week program for children who have learning disabilities, ADHD, and/or gifted, but excludes emotionally disturbed children.

153. She was not asserting that James needed the "Challenge" program.

154. Dare County Public Schools does not have the "Challenge" program.

155. She testified that North Carolina uses the discrepancy model that appears to be simple and objective. She admitted that dyslexia is a neurological condition that does not go away. She testified that it is very common for children with learning disabilities like dyslexia to show a decline in scores over time.

156. Although she agreed that the IQ scores of children with learning disabilities often "decline over time," she does not "agree" with the Matthew Effect. She testified that she does not believe that the decline in a child's IQ scores correlates with a lack of appropriate instruction. She admitted that she has not done any research in this area.

157. She testified that the Stanford-Binet measures different abilities than the Wechsler. She testified that the Wechsler is well standardized and gives consistent scores over time. She thought that James' low scores on some of the Wechsler subtests were due to his disability which is "processing speed." She thought that the decline in James' IQ between 1991 and 1994 was because the test was renormed.

158. She was unable to explain the drop in scores before the test was renormed.

159. She was unable to explain the continuing drop in James' IQ scores between 1994 and 1996. Despite these unanswered questions, she believes that the July 1996 scores on the Wechsler are a valid measure of James' ability. She stated that some things in tests cannot be explained.

160. Dr. Levin testified that when she reviewed the test results by Dr. Ellis, James' reading was "stable." Despite elementary level scores, she asserted that he is progressing at the same rate as his peers.

161. He did not progress to his potential, the North Carolina standard.

162. She testified that James' scores in Writing Samples increased significantly between 1996 and 1997. She thought that these improved scores meant that his writing skills may have improved.

163. Dr. Levin reviewed the IEPs on James for the past five years. There were no objective measures in the IEPs. The Third Grade IEP (Pa. Ex. 9) did not have dates when James obtained the objectives. She testified that the IEP developed for the fourth grade (Pa. Ex. 17) lacked information about whether mastery was obtained. The fourth grade IEP was the standard course of study.

164. Dr. Levin testified that parents are entitled to have an annual review of the IEP goals and objectives.

165. When she reviewed the fifth grade IEP (Pa. Ex. 21), this IEP did not include evaluation schedules, and no mastery of objectives was obtained. The IEP described the standard course of study and did not include information about whether or when IEP objectives were reached.

166. Dr. Levin testified on direct exam that the seventh grade IEP goals were appropriate for James. She felt it was appropriate to add an IEP goal about map reading, even if James did not have a "deficit" in maps. She said that maps are part of the standard course of study in seventh grade. (Pa. Ex. 27) According to Dr. Levin, "direct instruction" does not mean one-to-one instruction.

167. Dr. Levin testified that in high school, children receive compensatory IEPs because ninth grade is a different environment. The IEP developed for James did not address all areas of deficiency. When asked why the school could not remediate James' basic skills, Levin testified that they had tried many times to remediate James but he had not made progress. She felt that James could not grasp the "firm acquisition of phonics and spelling skills."

168. She testified that James should not be considered for a residential placement because, in her belief, formally diagnosed emotional problems are the only justification for a residential placement. She did not testify to any familiarity with case law regarding entitlement to a residential placement such as Trident Academy, Oakland School, or Landmark School.

169. On May 5, 1997, Cindy Caruso was the next witness to testify for Dare County. Ms. Caruso's education focused on teaching visually impaired and blind children.

170. She began working with James in the Spring of 1991, when he was in third grade. She did some of the earlier testing of James. She described her approach as "remedial and phonics-based." She believed that James made steady progress during the 1991-1992 school year. She used the Brigance to measure progress.

171. Ms. Caruso testified about how she developed IEPs. Typically, she brought a draft IEP to the meeting. She testified that she could not write an IEP at the IEP meeting because it would take too long. She testified that her practice was to bring in the IEP and share it with the parents.

172. In early 1992, two different IEPs were written for James. The first IEP was written on March 6, 1992 (Pa. Ex. 12), the second IEP was written on June 4, 1992 (Pa. Ex. 17). Despite the fact that they were written just three months apart, the goals and objectives were quite different. Ms. Caruso testified that the differences were due to the "standard course of study," i.e. what happens in the regular classroom.

173. Ms. Caruso testified that she taught reading and spelling together. It became obvious to her that James needed to work on "written language" skills. She was concerned about his reading speed. She believed that James made progress. She did not complete the information about when he obtained mastery. There was no standardized testing completed on James in the Spring of 1993 to measure progress or lack of progress.

174. Ms. Caruso has not worked with James since fifth grade. She did not attend the May 1996 IEP meeting but was asked to attend the June, 1996 IEP meeting. She believes that the June 1996 IEP is appropriate, even though the services were reduced. She asserted that the IEP was appropriate because James is smart but needs help in mainstream classes.

175. On cross-examination, she acknowledged that the Brigance does not have any data normed to other children. Because you cannot compare children, this can lead to problems. She was asked about concerns of educators that the Brigance lends itself to teaching to the test and acknowledged that it could. James' IEP goals were based upon the Brigance.

176. Stephanie Hinton Gray was the next witness for Dare County. Ms. Gray was James' LD teacher in middle school. James' class included children who were mentally retarded, learning disabled, other health impaired, and behavior disordered. She testified that despite her heavy load of challenging children, she spent 80-90 percent of her time with James.



177. By the time James arrived in seventh grade, Ms. Gray testified that she was not allowed to deviate from the standard course of study for LD students. IEP Goals were the same for all seventh grade students. She felt that James made progress in the seventh grade. She used the Standard Course of Study to develop his IEP.

178. She testified that eighth grade students were to learn the Standard Course of Study. In her opinion, acquisition of basic skills, such as reading and using remediation is not appropriate in high school because of the high school curriculum. Ms. Gray testified that she did not attend the May 1996 IEP meeting but did attend the June 1996 IEP meeting. She discussed James' situation with Karen Folb, the high school teacher who would be working with James.

179. On cross-examination, Ms. Gray acknowledged that James had ongoing problems in spelling, punctuation, and organization. There were no present levels of performance in the IEP for spelling or penmanship. She admitted that James' grades were "modified." They did not reflect his true grades.

180. His assignments were also "modified." Despite being at the 3<sup>rd</sup> to 4<sup>th</sup> percentile in Spelling and Writing, she asserted that he had mastered basic skills of phonemic awareness and decoding.

181. Ms. Gray testified that the "Teaching for Success" (TFS) program is a "set aside" - part of the program in high school.

182. The next witness was Karen Folb, a special education teacher at Cape Hatteras High School.

183. She initially asserted on direct exam that Dr. Felton started "whamming" her about how she would address James' needs.

184. Ms. Folb testified that Ms. Gray advised her that James was ready to go on to high school. She testified that at the May, 1996 IEP meeting, she laid out a copy of the child's schedule of basic required freshman classes. She testified that they could add a second period of TFS but this would cause conflicts with graduation.

185. Ms. Folb felt James was ready to go into mainstream high school classes. She did not think James needed a program like Landmark or that it was necessary for James. She acknowledged that Dr. Felton and Dr. Ellis said James needed more remediation. An IEP was not drafted that day.

186. Ms. Folb testified that by the time most students get to high school, they have mastered basic skills. In her opinion, because James passed the reading competency test, he was ready for the high school mainstream.

187. Ms. Folb reviewed Dr. Felton's letter that stated James needed remediation. She took issue with the word "remediation." She opined that research shows that children lose motivation to work on phonics by the seventh grade, that they are "maxed out" in phonics instruction. She did not offer any "research" to support her opinion.

188. She felt that basic skills needs are different and that older children need to be able to take notes, develop study habits instead of learning how to read.

189. Ms. Folb was aware that James was having stress-related problems. She took the letter from Dr. Felton personally.

190. On cross-examination, she went through her schedule of classes. She teaches three TFS classes and co-teaches two inclusion classes. There are 40 children in the ninth grade. TFS is a class that focuses on helping children make it in high school. It is available to other children - not just special education students. There is a regular TFS credit course and an Exceptional Children's TFS course.

191. Ms. Folb testified on cross-examination about the May 30, 1996 IEP meeting. She reviewed evaluations on James. She remembered the van Hover evaluation but was not sure about the Scottish Rite or Landmark test results. She agreed that present levels of performance are to "close the gap" between the child's ability and achievement. She testified that special education should be "to the total education of the child."

192. Ms. Folb also testified about the June 11, 1996 IEP meeting. She recalls that Ms. Ward said that James could get a certificate or he could graduate a year late. She testified that Mrs. Brody thought his reading was below average but the

school thought he was doing all right. She testified and believes that "nobody can fix a disability." Remediation programs do entail more than regular classrooms. Her goal was to teach him ways to accommodate and compensate, not teach the acquisition of basic skills.

193. Ms. Folb admitted that the decision had been made to place James in the TFS program before the May 30, 1996 IEP meeting. She agreed that Ms. Hinton Gray moved on to compensation in middle school, rather than continuing to remediate. She admitted that even if James had failed the competency testing, they would not have changed the IEP recommendations.

194. Ms. Folb admitted that she had no specialized training in area of decoding. Last time she had a reading course was in the Spring of 1977.

195. Betsy Gwinn testified for Dare County. She taught Math at the middle school. She taught James for seventh and eighth grades Math and Pre-algebra. He made average grades in her class.

196. On May 7, 1997, Dr. Betty Levey was the next witness to testify for Dare County. She was not excluded as a witness and was present during the previous testimony.

197. Dr. Levey has a doctorate in Speech/Language and Mental Retardation. She was trained as a state review officer until 1995. She was hired by Dare County to act as a trial consultant. She never taught or met James Brody. She never tested him. She never participated in an IEP meeting about him. She reviewed the records in James' case. She testified that standardized test scores indicated that James made acceptable educational progress.

198. Dr. Levey advocates using the "Deshler method" for adolescents with learning disabilities. She believes it is inappropriate to use basic skills remediation with middle school and high school students. She believes that by middle school, you are looking for independent learning. She testified that books on tape "help give independence." She does not believe that the Landmark teachers are qualified to teach LD students.

199. On cross-examination, Dr. Levey disagreed with teaching decoding skills to LD students. She favored "adjustment of the curriculum, not adjustment of the student." She agreed that it is inappropriate and illegal to make placement decisions before developing the IEP goals and objectives.

200. Terry Jones was the last witness for Dare County Public Schools. Mr. Jones is the Exceptional Children's Director. His staff advised him that the parents were requesting intensive remediation for their son and a residential placement if James could not be remediated locally. He testified that after reviewing the file, he could not support an out of district placement.

201. Mr. Jones testified about the June 11, 1996 IEP meeting. He advised the parents that goals and objectives determine the level of service a child needs. He testified that the parents and school came to an agreement on the goals and objectives. He agreed that the disagreement revolved around the level or intensity of services James needed.

202. School board counsel asked Mr. Jones to look at the 1996-1997 IEP. He testified that there is no requirement to include test results or objective information and that the present levels of performance are whatever is agreed upon by the committee.

203. Mr. Jones felt that James was mastering the standard course of study. He made this decision based on James' grades, his passing the competency test, and his progress on individual testing. Mr. Jones admitted that in this individual testing, there had been declines.

204. Mr. Jones testified that after receiving the parents' August 6 letter, he called the school board attorney. After discussing the situation with the attorney, he wrote a letter to the parents offering an IEP meeting or mediation. Mr. Jones testified that James has a less challenging curriculum at Landmark than he would have had in Dare County. He objects to Landmark because it is not the least restrictive environment and it costs more than \$30,000.00 dollars a year.

205. Mr. Jones testified that books on tape are available through his office.

206. On cross-examination, Mr. Jones admitted that everyone on the IEP committee is responsible for providing

input into the IEP. He admitted that the only person who has tested James twice was Mitchell Batemen. Mitchell Bateman did not testify at the Due Process Hearing. Mr. Jones testified that there was no requirement for school staff to document consideration of private evaluations.

207. On cross-examination, Mr. Jones testified that before 1994, *Parent's Rights Handbooks* did not have a 60-day notice.

208. After Dare County rested, Linda Brody testified about the Handbook and Notice issues. She testified that she has never received a 1994 Handbook. At the Due Process Hearing, Mrs. Brody testified that she did not receive a *Parent's Rights Handbook* dated 1993 until after the IEP meeting on May 31, 1996, not a reasonable time before the meeting. (T2-221).

209. At the Due Process Hearing, Mrs. Brody testified that she had only received one other *Parents Rights Handbook*, which was dated 1991, before Dare County evaluated James for the first time. (T2-220).

210. The school system introduced a copy of *Parent's Rights Handbook* dated 1994 which Mrs. Brody testified she did not receive. (T2-221) Her testimony was uncontradicted.

211. James was the last witness. He testified that he wanted to return to Landmark School.

### **CONCLUSIONS OF LAW**

1. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 *et seq.*, is the federal statute governing the education of students with disabilities. The federal regulations promulgated under the IDEA are codified at 34 C.F.R. Parts 300 and 301. A child is deprived of a free appropriate education (FAPE) under two conditions: first, if the school system violates the IDEA's procedural requirements in a way that detrimentally affects the child's education; and second, if the school system develops an IEP that is not reasonably calculated to enable the child to receive educational benefit.

2. The controlling state law for students with disabilities is North Carolina General Statute Chapter 115C Article 9 and the corresponding state regulations including the State Procedures Governing Programs and Services for Students with Special Needs, Sections, .1501-.1541 (1996).

3. The Office of Administrative Hearings has jurisdiction of this contested case pursuant to Chapters 150B and 115C of the North Carolina General Statutes and the Individuals with Disabilities Education Act and implementing regulations.

4. The Respondent is required under federal and state law to make available special education and related services to James Brody and offer him a free and appropriate public education as that term is defined under the IDEA and state law.

5. James Brody is a student with a disability for purposes of the IDEA and corresponding state law.

6. The public policy of the State of North Carolina regarding special education is:

The General Assembly of the State of North Carolina hereby declares that the policy of this State is to ensure every child a fair and full opportunity to reach his **full potential** and that no child as defined in this section and in G.S. 115C-122 shall be excluded from service or education for any reason whatsoever.

The policy of this State is to provide a free appropriate public supported education to every child with special needs. (emphasis added) G.S. 115C-106

7. North Carolina statutory and case law require that special education must ensure that "the child has an opportunity to reach [his] full potential." *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 983 (4th Cir. 1990)

8. The Individuals with Disabilities Education Act (IDEA) creates only a federal minimum and States may structure educational programs, which exceed the federal floor. IDEA, 20 U.S.C.A. Secs. 1400-1485.

9. North Carolina chose to exceed the federal benchmark and measure each child "against his or her own expected performance." *In re Felton Letter*, 23 IDELR 714, 717. (OSEP 1995)



10. Under the Individuals with Disabilities Act, a handicapped child is deprived of FAPE if either (1) the school system violates the IDEA's procedural requirements and thereby detrimentally impacts the child's education; or (2) drafts an IEP that is not reasonably calculated to enable the child to receive educational benefits. *Board of Education v. Rowley*, 458 U.S. 176, 207, 102 S.Ct. 3034, 3051, 73 L.Ed. 2d 690 (1982); *Hudson v. Wilson*, 828 F.2d 1059, 1063 (4th Cir. 1987)

11. James is a student with superior intelligence and dyslexia. Dare County Public Schools failed to develop an appropriate 1996-97 IEP individualized for James Brody's "special needs."

12. According to the public policy of this State in relationship to Special Education as stated in N.C.G.S. Section 115C-106(b), one of the policies is to provide a system for identifying and evaluating the educational needs of all children with special needs. It is to assure that the rights of children with special needs and their parents or guardians are protected, as well as to insure that there be no inadequacies, inequities, and discrimination with respect to children with special needs. G.S. 115C-106.

13. James' needs resulting from his dyslexia were not identified or properly evaluated by school personnel.

14. James developed a negative self-concept with frustration that affected school and family relationships. The frustrations and pressures to succeed in school created secondary behavioral problems. He began missing school.

15. The mere facts that James received passing marks and was promoted from grade to grade is not dispositive in determining whether he received FAPE according to the United States Supreme Court. *Board of Education v. Rowley*, 458 U.S. 176, 203 at n. 25, 102 S.Ct. 3034, 3049 n. 25 (1982)("We do not hold today that every handicapped child who is advancing from grade to grade in a regular public school is automatically receiving a 'free appropriate public education.'").

16. The Respondent failed its affirmative duty to provide Petitioners with **prior** written notice of their rights to independent educational evaluations and a free and appropriate public education (FAPE).

17. In compliance with the Individuals with Disabilities Education Act procedural requirements found in Chapter 33 of 20 U.S.C. Section 1415, the NCDPI established due process procedures for parents and children. *See North Carolina Department of Public Instruction's Procedures Governing Programs and Services for Children with Special Needs*, Section 1517 - Due Process Procedures for Parent and Children (1993 and 1996 edition which contain identical requirements) Section 1517 (D) states that "written notice which meets the requirements of paragraph (E) of this rule must be given to the parents of a child with special needs before the local educational agency:

(a) proposes to initiate or **change** the identification, evaluation, or educational placement of the child or **the provision of a free appropriate public education to the child; or**

**refuses to initiate or change** the identification, evaluation, or educational placement of the child or **the provision of a free appropriate public education."** (Emphasis added)

18. From 1987 to June 1996, numerous requests were made by the Brodys regarding the Respondent's provision of a free appropriate public education which were never addressed by the Respondent. According the NCDPI rules, the Brodys were entitled to notice of their rights for each of these numerous requests. The Respondent denied the Brody's an opportunity to be heard regarding their concerns about James' educational programming.

19. The Brody's never received specific explanations as to why the Respondent failed to consider their independent evaluations from their independent evaluators or why the Respondent failed to reimburse the Brody for these expenses, why Brody's academic progress worsened from year to year, and countless other inquires regarding the Respondent's failure to provide a FAPE to their child. NCDPI Rule 1517 (E) (1) (a-g).

20. The Respondent's failure to comply with the procedural requirements of the IDEA and corresponding state law resulted in a deprivation of services and harmed both James Brody and his parents. Had Dare County Public Schools informed the Brody's of their due process rights years ago, the parents could have asserted their rights at an earlier point in time. James would have received the services he needed to achieve academically in public school rather than having to resort to leaving home and attending Landmark School.

21. Petitioners are entitled to compensatory education because of Respondent's failure to provide James with a FAPE.

22. The North Carolina Administrative Procedure Act (NCAPA) requires that a petition for due process be filed within sixty (60) days of the contested action. N.C.G.S. Section 150B-23(b) NCAPA also states that the agency "shall inform the persons of the right, the procedure, and the time limit to file a contested case petition." *Id.*

23. Until the Petitioner receives appropriate notice of her due process right, the statute of limitations is tolled. Petitioner was not given prior written notice of her right to file due process within 60 days of any of the IEPs. It is uncontested testimony that the parents were never provided with notice of their rights. A parental rights book was proffered as an Exhibit by the School Board, however the evidence was that this version of the Handbook was not provided to the parents.

24. Before June 4, 1996, the parents were not provided a *Parent's Handbook* advising them of their due process rights.

25. Dare County Public Schools is charged with the affirmative duty of providing the parents with **written prior notice** of their due process rights. IDEA, 20 U.S.C. Ch. 33 Sect. 1415 (b) Despite extensive communication between the parties, no one from Dare County Schools gave the parents a *Parent's Rights Handbook* until Spring 1996 and that handbook was outdated.

26. The Respondent failed its affirmative duty to apprise Petitioners of their rights to independent educational evaluations and a free and appropriate public education (FAPE).

27. Petitioners have the right to an independent educational evaluation at public expense, if the parent disagrees with the Respondent's evaluation or the Respondent fails to conduct an evaluation. 34 C.F.R. 300.503(b).

28. Petitioners had James evaluated by Drs. Felton and Ellis at their own expense. Moreover, the results of Petitioners' privately obtained independent educational evaluations must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child. 34 C.F.R. 300.503(c)(1).

29. The Petitioners are entitled to reimbursement for either Dr. Felton or Dr. Ellis' educational evaluation.

30. The Dare County Public Schools' 1996-97 IEP was fatally flawed.

31. The Respondent's 1996-97 IEP failed to contain meaningful educational goals and objectives. Moreover, the criteria for measuring James' progress was inappropriate and violated Appendix C to Part 300 of the Code of Federal Regulations; *see e.g.*; *Raelee S. v. Susquenita School District*, \_\_\_ F. Supp. \_\_\_, (M.D. PA 1996) *affm'd at Susquenita Sch. Dist. v. Raelee S. by Heidi S.*, 96 F.3d 78, 24 IDELR 839, (3rd Cir. 1996)(Judge McClure found that the School District's IEP "failed to include meaningful educational goals, to establish meaningful and quantifiable short-term objectives or criteria for measuring Raelee's progress, and failed to include examples of specific instruction methods useful for teaching Raelee." He stated that: "One of the goals imposed by federal regulations is an emphasis on closing the gap between the exceptional student's achievement and his or her ability levels. 34 C.F.R. 346, Appendix C.").

32. Closing the gap between James' ability and achievement level was a realistic and meaningful goal for him and an appropriate school objective under Appendix C of 34 C.F.R. 300. The 1996-97 IEP was not designed to close the gap between James' ability and achievement.

33. Subsequent testimony from witnesses on behalf of James Brody and even School Board witness Wendy Levin proved that the IEPs violated Appendix C.

34. Although in testimony, Dare County Public Schools implied that James would be better off in a larger public school rather than Landmark, for the 1996-97 school year Landmark was the least restrictive environment. The Fourth Circuit recognized, as does this court, that the mainstreaming preference of IDEA is secondary to educational benefit, i.e., learning how to read and write. The Respondent failed to comply with the requirements of the IDEA, and unilateral private school placement was the only option available to the Petitioners. *Carter v. Florence County School District Four*, 950 F. 2d 156, 18 IDELR 350, 352, (4th Cir. 1991).

35. Respondent's 1996-97 IEP did not propose any specific measurable gain. The U. S. Supreme Court clarified the meaning of educational benefit in the *Town of Burlington v. Department of Education for the Commonwealth of Massachusetts*, 471 U. S. 359, 105 S. Ct. 1996, 2002 (1985). The Court focused on tuition reimbursement for parents when the public school defaults. *Burlington* was a unanimous decision issued thirty-four days after argument. (Chief) Justice Rehnquist defined the IEP concept and process. He stated that the free appropriate education mandated by the Act is designed for the specific needs of the handicapped child through the Individualized Educational Program (IEP) which is "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." The instruction must be specially designed to meet the child's unique needs so that the child will learn. Failing that, if the child learns in another environment, the parents are entitled to be reimbursed for securing and paying for that other school environment that was able to teach the child to read and write.

36. James Brody is entitled to learn how to read, write, and spell. He is entitled to be exposed to and have access to instruction that will teach him those skills.

37. The Individuals with Disabilities Education Act, as interpreted by *Burlington*, imposes only two prerequisites to reimbursement: that the program proposed by the state failed to provide the child with a free appropriate public education, and that the private school in which the child is enrolled succeeded in providing an appropriate education, i.e., an education that is reasonably calculated to enable the child to receive educational benefits.

38. Dare County Public Schools has failed to teach James Brody basic reading, writing, and spelling skills and its recommendation that James should merely receive an attendance certificate completely contradicts the philosophy of the IDEA and the North Carolina "Creech Act."

39. Landmark School taught James Brody basic reading, writing, spelling and arithmetic skills, and he received an appropriate education at Landmark School.

40. Dare County Public Schools failed to develop an IEP according to the requirements of the Act, said failure results in the denial of a free and appropriate public education. *Hall v. Vance County Bd. of Education*, 774 F.2d 629, 635 (4th Cir. 1985).

41. Dare County Public Schools violated both the procedural and substantive requirements of the IDEA and corresponding state law resulting in harm to both James Brody and his parents.

42. Petitioners are entitled to reimbursement of the private school tuition for the 1996-97 school year.

### ORDER

1. The Petitioners' Motion for Summary Judgment is denied.

2. The Respondent shall reimburse the Petitioners for one independent educational evaluation of James Brody.

3. The Respondent shall reimburse the Petitioners for the costs of the private school tuition at Landmark School and all related expenses for the 1996-97 school year.

4. Pursuant to the Interim Order signed August 13, 1997, an IEP meeting shall be convened immediately to provide the parties an opportunity to develop an IEP for the 1997-98 school year for James Brody which will appropriately serve his special needs in the least restrictive environment and offer as much mainstreaming in the regular classroom as is practical to remediate James' disability.

5. The 1997-98 IEP shall be consistent with the recommendations of Drs. Felton and Ellis concerning the remediation of James Brody's special needs in reading and written expression.

6. The Petitioners are prevailing parties for the purposes of award of attorneys fees and litigation costs.

7. This cause is retained for further orders as may by just and proper.

### NOTICE



In order to appeal this Final Decision, the person seeking review must file a written notice of appeal with the North Carolina Superintendent of Public Instruction. The written notice of appeal must be filed within thirty (30) days after the person is served with a copy of this Decision. G.S. 115C-116(h) and (i).

This the 25<sup>th</sup> day of August, 1997.

\_\_\_\_\_  
Judge William A. Creech

STATE OF NORTH CAROLINA

**COUNTY OF BUNCOMBE**

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
97 ABC 0706

**N.C. ALCOHOLIC BEVERAGE CONTROL,  
COMMISSION**

**Petitioner,**

 $\mathbf{y}_i$ 

**GROVE PARK INN RESORT, INC., T/A**

**GROVE PARK INN,**

**Respondent.**

## RECOMMENDED DECISION

## APPEARANCES

For Petitioner:

Fred A. Gregory  
Deputy Counsel  
ABC Commission

**For Respondent:**

Joseph A. Connelly  
Attorney at Law  
81 Central Avenue  
Asheville, NC 28801

## ISSUES

Whether permittee knowingly possessed gambling devices on the licensed premises on or about December 3, 1996, in violation of G.S. 18B-1005(a)(3); 14-297; 14-295 and ABC Commission Rule 4 NCAC 2S .0207(b).

## FINDINGS OF FACT

The undersigned Administrative Law Judge finds the following stipulated facts:

1. That Respondent holds the following ABC permits: Mixed Beverage, Malt Beverage, Fortified and Unfortified Wine, and Special Occasions.
2. That on December 3, 1996, ALE Agent Sam Darakjy received a phone call from Tonya Ward, Respondent's Conventions Service Manager, concerning the legality of the use of a roulette type wheel for a fund raising event.
3. That Agents Darakjy and Page visited Respondent's establishment, pursuant to Ms. Ward's phone call, in order to render an opinion as to the legality of the device.
4. That upon inspection of Respondent's premises, Agent Darakjy and Page found numerous roulette wheels, blackjack tables, crap tables, poker chips and playing cards.
5. That the above items are gambling devices and are illegal to possess.
6. That the gambling devices were only used by the Respondent as props for charitable fund raising events and amusements.
7. That Respondent no longer possesses any gambling devices.
8. That there was no gambling for money or profit by Respondent.

9. That Respondent maintained possession of the gambling devices in reliance of past ABC Commission opinion that the use of such devices as props for charitable fund raising events was legal.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following Conclusions of Law:

1. The Office of Administrative Hearings has jurisdiction in this matter.
2. That both parties received proper notice before this contested case hearing.
3. That the roulette wheel, blackjack table and crap tables found on Respondent's premises are gambling devices as defined in G.S. 14-295 and 14-297.
4. That because of Respondent's reliance on past ABC Commission opinions, Respondent did not knowingly violate the ABC laws pursuant to G.S. 18B-1005(a)(3).

**RECOMMENDED DECISION**

Based upon the foregoing Findings of Facts and Conclusions of Law, the undersigned Administrative Law Judge recommends that this action be dismissed and the Respondent be advised that the gambling devices previously possessed by the Respondent are illegal to possess and are violations of the ABC law.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Alcoholic Beverage Control Commission.

This the 15<sup>th</sup> day of September, 1997.

\_\_\_\_\_  
Fred G. Morrison, Jr.  
Administrative Law Judge



*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
19A	Transportation	Medical Examiners	32
20	Treasurer	Midwifery Joint Committee	33
*21	Occupational Licensing Boards	Mortuary Science	34
22	Administrative Procedures	Nursing	36
23	Community Colleges	Nursing Home Administrators	37
24	Independent Agencies	Occupational Therapists	38
25	State Personnel	Opticians	40
26	Administrative Hearings	Optometry	42
27	NC State Bar	Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Psychology Board	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
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		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

**Note:** Title 21 contains the chapters of the various occupational licensing boards.



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					Action	Date				
This index provides information related to notices, rules and other documents published in the Register. It includes information about rules for which Notice of Rule-Making Proceedings or Notice of Text have been published, rules submitted to the Rules Review Commission and rules codified since the last session of the General Assembly. For assistance contact the Rules Division at 919/733-2678.										
Fiscal Note: S = Rule affects the expenditure or distribution of state funds. L = Rule affects the expenditure or distribution of local government funds. SE = Rule has a substantial economic impact of at least \$5,000,000 in a 12-month period. * = Rule-making agency has determined that the rule does not impact state or local funds and does not have a substantial economic impact. See G.S. 150B-21.4.										
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Rules Division										
26 NCAC 02C 11:19 NCR 1413										
ADMINISTRATION										
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1 NCAC 30G .0101		11:04 NCR 194	11:19 NCR 1414	*	Approve	03/20/97			11:26 NCR 2004	
1 NCAC 30G .0102		11:04 NCR 194	11:19 NCR 1414	*	Object	03/20/97				
1 NCAC 30G .0103		11:04 NCR 194	11:19 NCR 1414	*	Approve	05/15/97	*		11:30 NCR 2314	
1 NCAC 30G .0104		11:04 NCR 194	11:19 NCR 1414	*	Approve	03/20/97	*		11:26 NCR 2004	
1 NCAC 30G .0105		11:04 NCR 194	11:19 NCR 1414	S/L	Object	03/20/97				
					Approve	05/15/97	*		11:30 NCR 2314	
					Approve	03/20/97			11:26 NCR 2004	
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2 NCAC 48A .0206	10:24 NCR 3056		11:06 NCR 324	*	Ext. Review	12/19/96				
					Approve	01/16/97	*		11:22 NCR 1717	
2 NCAC 48A .0211	10:24 NCR 3056		11:06 NCR 324	*	Ext. Review	12/19/96				
					Approve	01/16/97	*		11:22 NCR 1717	
2 NCAC 48A .0214	10:24 NCR 3056		11:06 NCR 324	*	Ext. Review	12/19/96			11:22 NCR 1717	
					Approve	01/16/97				
2 NCAC 52A .0104	11:27 NCR 2053		12:03 NCR 169	*						
2 NCAC 52A .0105	11:27 NCR 2053		12:03 NCR 169	*						
2 NCAC 52A .0106	11:27 NCR 2053		12:03 NCR 169	*						
2 NCAC 52A .0107	11:27 NCR 2053		12:03 NCR 169	*						
2 NCAC 52A .0108	11:27 NCR 2053		12:03 NCR 169	*						
2 NCAC 52A .0109	11:27 NCR 2053		12:03 NCR 169	*						
2 NCAC 52B .0212	11:14 NCR 1107		11:22 NCR 1709	*	Approve	05/15/97			11:30 NCR 2314	
2 NCAC 52B .0303	11:14 NCR 1107		11:22 NCR 1709	*	Approve	05/15/97			11:30 NCR 2314	
2 NCAC 52C .0701	11:14 NCR 1107		11:22 NCR 1709	*	Approve	05/15/97			11:30 NCR 2314	

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2 NCAC 52D .0101	11:27 NCR 2053		12:03 NCR 169	*						
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2 NCAC 43F .0103	11:14 NCR 1107		11:22 NCR 1706	*	Object	05/15/97				
2 NCAC 43H .0101	11:14 NCR 1107		11:22 NCR 1706	*	Approve	06/19/97	*		12:03 NCR 213	
2 NCAC 43H .0107	11:14 NCR 1107		11:22 NCR 1706	*	Approve	05/15/97			11:30 NCR 2314	
2 NCAC 43L .0202	11:14 NCR 1107		11:22 NCR 1706	*	Object	05/15/97	*			
2 NCAC 43L .0401	11:14 NCR 1107		11:22 NCR 1706	*	Approve	06/19/97			12:03 NCR 213	
2 NCAC 43L .0402	11:14 NCR 1107		11:22 NCR 1706	*	Approve	05/15/97			11:30 NCR 2314	
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2 NCAC 43L .0405	11:14 NCR 1107		11:22 NCR 1706	*	Approve	05/15/97	*		11:30 NCR 2314	
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2 NCAC 48F .0301	11:07 NCR 407		11:11 NCR 883	*	Approve	03/20/97			11:26 NCR 2004	
2 NCAC 48F .0302	11:07 NCR 407		11:11 NCR 883	*	Approve	03/20/97			11:26 NCR 2004	
2 NCAC 48F .0304	11:07 NCR 407		11:11 NCR 883	*	Approve	03/20/97	*		11:26 NCR 2004	
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2 NCAC 48F .0306	11:07 NCR 407		11:11 NCR 883	*	Approve	03/20/97	*		11:26 NCR 2004	
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2 NCAC 34 .0602		11:21 NCR 1651	12:06 NCR 455	*						
2 NCAC 34 .0604		11:21 NCR 1651	12:06 NCR 455	*						
2 NCAC 34 .0605		11:21 NCR 1651	12:06 NCR 455	*						
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21 NCAC 02 .0208	12:04 NCR 244									
21 NCAC 02 .0210	12:04 NCR 244									
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4 NCAC 01J	11:09 NCR 569									
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4 NCAC 19L .0404	11:09 NCR 569		11:14 NCR 1113	*						
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4 NCAC 19L .0802	11:09 NCR 569		11:14 NCR 1113	*						
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4 NCAC 19L .0906	11:09 NCR 569		11:14 NCR 1113	*						
4 NCAC 19L .0907	11:09 NCR 569		11:14 NCR 1113	*						
4 NCAC 19L .0911	11:09 NCR 569		11:14 NCR 1113	*						
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4 NCAC 19L 1805	11:09 NCR 569		11:14 NCR 1113	*						
4 NCAC 19L 1900	11:09 NCR 569		11:14 NCR 1113	*						
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4 NCAC 06C 0205	10:18 NCR 2398		11:29 NCR 2182	*	Approve	08/21/97			12:07 NCR 561	
4 NCAC 06C 0407	10:18 NCR 2398		11:29 NCR 2182	*	Object	08/21/97				
4 NCAC 06C 0409	10:18 NCR 2398		11:29 NCR 2182	*	Approve	08/21/97			12:07 NCR 561	
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4 NCAC 13A 0101	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13A 0102	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
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4 NCAC 13B 0001	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13B 0002	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13B 0003	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
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4 NCAC 13C .0001	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
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4 NCAC 13E .0101	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0102	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
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4 NCAC 13E .0402	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0403	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0404	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0405	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0501	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0502	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0601	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0602	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0603	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0701	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0702	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0801	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0803	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0901	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13E .0902	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13F .0301	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	
4 NCAC 13F .0302	10:24 NCR 3056		11:13 NCR 1040	*	Approve	06/19/97			12:03 NCR 213	

## COMMUNITY COLLEGES

23 NCAC 01A .0001 11:18 NCR 1369 11:25 NCR 1919

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23 NCAC 02C .0108	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02C .0202	11:18 NCR 1369									
23 NCAC 02C .0207	11:18 NCR 1369									
23 NCAC 02C .0305	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02C .0604	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02C .0701	11:18 NCR 1369									
23 NCAC 02D .0103	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02D .0201	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02D .0202	11:17 NCR 1336									
23 NCAC 02D .0202	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02D .0203	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02D .0301	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02D .0323	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02D .0324	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02D .0327	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02E .0101	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02E .0102	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02E .0201	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02E .0203	10:24 NCR 3058		11:09 NCR 585	*	Object Approve	01/16/97 02/20/97	*		11:24 NCR 1832	
23 NCAC 02E .0203	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02E .0204	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02E .0205	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02E .0501	11:18 NCR 1369	11:25 NCR 1919								
23 NCAC 02E .0604	11:18 NCR 1369	11:25 NCR 1919								

## COSMETIC ART EXAMINERS

21 NCAC 14G .0101	12:06 NCR 453
21 NCAC 14G .0103	12:06 NCR 453
21 NCAC 14G .0107	12:06 NCR 453
21 NCAC 14G .0113	12:06 NCR 453

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21 NCAC 14H .0113	12:06 NCR 453									
21 NCAC 14H .0119	12:06 NCR 453									
21 NCAC 14I .0104	12:06 NCR 453									
21 NCAC 14I .0105	12:06 NCR 453									
21 NCAC 14I .0107	12:06 NCR 453									
21 NCAC 14I .0109	12:06 NCR 453									
21 NCAC 14I .0401	12:06 NCR 453									
21 NCAC 14J .0102	12:06 NCR 453									
21 NCAC 14J .0103	12:06 NCR 453									
21 NCAC 14J .0104	12:06 NCR 453									
21 NCAC 14J .0105	12:06 NCR 453									
21 NCAC 14J .0202	12:06 NCR 453									
21 NCAC 14J .0204	12:06 NCR 453									
21 NCAC 14J .0205	12:06 NCR 453									
21 NCAC 14J .0206	12:06 NCR 453									
21 NCAC 14J .0303	12:06 NCR 453									
21 NCAC 14J .0306	12:06 NCR 453									
21 NCAC 14J .0307	12:06 NCR 453									
21 NCAC 14J .0401	12:06 NCR 453									
21 NCAC 14J .0402	12:06 NCR 453									
21 NCAC 14J .0403	12:06 NCR 453									
21 NCAC 14J .0404	12:06 NCR 453									
21 NCAC 14J .0501	12:06 NCR 453									
21 NCAC 14K .0101	12:06 NCR 453									
21 NCAC 14K .0103	12:06 NCR 453									
21 NCAC 14L .0101	12:06 NCR 453									
21 NCAC 14L .0105	12:06 NCR 453									
21 NCAC 14L .0108	12:06 NCR 453									
21 NCAC 14L .0214	12:06 NCR 453									



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21 NCAC 14N .0105	12:06 NCR 453									
21 NCAC 14N .0107	12:06 NCR 453									
21 NCAC 14N .0108	12:06 NCR 453									
21 NCAC 14N .0113	12:06 NCR 453									
<b>CRIME CONTROL &amp; PUBLIC SAFETY</b>										
Governor's Crime Commission										
14A NCAC 07 .0313	11:24 NCR 1818		12:01 NCR 6	*						
<b>CULTURAL RESOURCES</b>										
North Carolina Historical Commission										
7 NCAC 04R	12:06 NCR 444									
USS North Carolina Battleship Commission										
7 NCAC 05 .0203		11:19 NCR 1436	Temp Expired							
<b>DENTAL EXAMINERS</b>										
21 NCAC 16B .0303	11:20 NCR 1538		11:25 NCR 1915	*						
21 NCAC 16I .0001	11:20 NCR 1538		11:25 NCR 1915	*						
21 NCAC 16I .0002	11:20 NCR 1538		11:25 NCR 1915	*						
21 NCAC 16I .0003	11:20 NCR 1538		11:25 NCR 1915	*						
21 NCAC 16I .0004	11:20 NCR 1538									
21 NCAC 16I .0005	11:20 NCR 1538									
21 NCAC 16I .0006	11:20 NCR 1538		11:25 NCR 1915	*						
21 NCAC 16M .0001	11:20 NCR 1538		11:25 NCR 1915	*						
21 NCAC 16M .0003	11:20 NCR 1538		11:25 NCR 1915	*						
21 NCAC 16R .0001	11:20 NCR 1538		11:25 NCR 1915	*						
21 NCAC 16R .0002	11:20 NCR 1538		11:25 NCR 1915	*						
21 NCAC 16R .0003	11:20 NCR 1538		11:25 NCR 1915	*						
21 NCAC 16R .0004	11:20 NCR 1538									
21 NCAC 16R .0005	11:20 NCR 1538		11:25 NCR 1915	*						
21 NCAC 16V .0101	10:16 NCR 2043		11:20 NCR 1556	*						Notice Subject Matter
21 NCAC 16V .0102	10:16 NCR 2043		11:20 NCR 1556	*						Notice Subject Matter

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## ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

15A Public Notice - Division of Water Quality  
 15A Administrative Order on Consent - Division of Waste Management  
 15A NCAC 01K 10:19 NCR 2506  
 15A NCAC 01M .0101 Temp Expired  
 15A NCAC 01M .0102 Temp Expired  
 15A NCAC 01M .0201 Temp Expired  
 15A NCAC 01M .0202 Temp Expired  
 15A NCAC 01M .0301 Temp Expired  
 15A NCAC 01M .0302 Temp Expired  
 15A NCAC 01M .0303 Temp Expired  
 15A NCAC 01M .0304 Temp Expired  
 15A NCAC 01M .0305 Temp Expired  
 15A NCAC 01M .0306 Temp Expired  
 15A NCAC 12B .0901  
 15A NCAC 19G .0102 12:02 NCR 52

12:03 NCR 112  
 12:03 NCR 158

## Coastal Resources Commission

15A NCAC 07 11:04 NCR 183  
 15A NCAC 07H .0106 11:19 NCR 1408  
 15A NCAC 07H .0201 11:22 NCR 1704  
 15A NCAC 07H .0202 11:22 NCR 1704  
 15A NCAC 07H .0203 11:22 NCR 1704  
 15A NCAC 07H .0204 11:22 NCR 1704  
 15A NCAC 07H .0205 11:22 NCR 1704  
 15A NCAC 07H .0206 11:22 NCR 1704  
 15A NCAC 07H .0207 11:22 NCR 1704  
 15A NCAC 07H .0208 11:22 NCR 1704  
 15A NCAC 07H .0208 11:04 NCR 183  
 15A NCAC 07H .0208 11:19 NCR 1408  
 15A NCAC 07H .0210 12:02 NCR 52

11:27 NCR 2058  
 11:27 NCR 2058  
 11:27 NCR 2058  
 agency withdrew  
 11:27 NCR 2058  
 11:27 NCR 2058  
 11:27 NCR 2058  
 agency withdrew  
 11:27 NCR 2058  
 11:11 NCR 907  
 11:27 NCR 2058

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					Action	Date				
15A NCAC 07H .0304	11:15 NCR 1200	11:15 NCR 1226 Temp Expired	11:27 NCR 2069	S						
15A NCAC 07H .0305	11:15 NCR 1200	11:15 NCR 1226 Temp Expired	11:27 NCR 2069	S						
15A NCAC 07H .0306	11:04 NCR 183		11:11 NCR 907	*						
15A NCAC 07H .0309	11:08 NCR 442		11:12 NCR 981	*	Approve	01/16/97	*		11:22 NCR 1717	
15A NCAC 07H .1104	11:04 NCR 183		11:11 NCR 907	*						
15A NCAC 07H .1202	11:04 NCR 183		11:11 NCR 907	*						
15A NCAC 07H .1204	11:04 NCR 183		11:11 NCR 907	*	Approve	08/21/97	*		12:07 NCR 561	
15A NCAC 07H .1205	11:04 NCR 183		11:11 NCR 907	*	Object	08/21/97	*			
15A NCAC 07H .1304	11:04 NCR 183		11:11 NCR 907	*	Approve	08/21/97	*		12:07 NCR 561	
15A NCAC 07H .1404	11:04 NCR 183		11:11 NCR 907	*						
15A NCAC 07H .1504	11:04 NCR 183		11:11 NCR 907	*						
15A NCAC 07H .1600	11:15 NCR 1200		11:11 NCR 907	*						
15A NCAC 07H .1601	11:15 NCR 1200		11:27 NCR 2071	*						
15A NCAC 07H .1604	11:15 NCR 1200		11:27 NCR 2071	*						
15A NCAC 07H .1605	11:15 NCR 1200		11:27 NCR 2071	*						
15A NCAC 07H .1704	11:04 NCR 183		11:11 NCR 907	*						
15A NCAC 07H .1804	11:04 NCR 183		11:11 NCR 907	*						
15A NCAC 07H .1904	11:04 NCR 183		11:11 NCR 907	*						
15A NCAC 07H .2004	11:04 NCR 183		11:11 NCR 907	*						
15A NCAC 07H .2104	11:04 NCR 183		11:11 NCR 907	*						
15A NCAC 07K .0203	11:04 NCR 183		11:11 NCR 907	*	Approve	08/21/97	*		12:07 NCR 561	
15A NCAC 07M .0301	10:16H NCR 1921		11:11 NCR 907	*						
15A NCAC 07M .0302	10:16H NCR 1921		11:11 NCR 907	*						
15A NCAC 07M .0303	10:16B NCR 1921		11:11 NCR 907	*						
15A NCAC 07M .0304	10:16B NCR 1921		11:11 NCR 907	*						
15A NCAC 07M .0305	10:16B NCR 1921		11:11 NCR 907	*						
15A NCAC 07M .0306	10:16B NCR 1921		11:11 NCR 907	*						
15A NCAC 07M .0307	10:16B NCR 1921		11:11 NCR 907	*						
15A NCAC 07M .0308	10:16B NCR 1921		11:11 NCR 907	*						



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15A NCAC 07M .0309	10:16B NCR 1921		11:11 NCR 907	*						
15A NCAC 07M .0401	10:18 NCR 2317		11:11 NCR 931	*	Approve	01/16/97	*			
15A NCAC 07M .0402	10:18 NCR 2317		11:11 NCR 931	*	Approve	01/16/97	*			
15A NCAC 07M .0403	10:18 NCR 2317		11:11 NCR 931	*	Object	01/16/97	*			
15A NCAC 07M .1201	11:19 NCR 1408		11:27 NCR 2058	*	Approve	02/20/97	*		11:24 NCR 1832	
15A NCAC 07M .1202	11:19 NCR 1408		11:27 NCR 2058	*						
<b>Environmental Management Commission</b>										
15A NCAC 02	10:24 NCR 3045									
15A NCAC 02	11:04 NCR 183									
15A NCAC 02	11:19 NCR 1408									
15A NCAC 02B .0101	11:24 NCR 1818		11:30 NCR 2303	*						
15A NCAC 02B .0202	11:24 NCR 1818		11:30 NCR 2303	*						
15A NCAC 02B .0202	11:02 NCR 75		12:06 NCR 462	S/L/SE						
15A NCAC 02B .0223	11:02 NCR 75									
15A NCAC 02B .0223	11:03 NCR 109									
15A NCAC 02B .0224	10:18 NCR 2400		11:12 NCR 973	*						
15A NCAC 02B .0227	10:18 NCR 2400		11:12 NCR 973	*						
15A NCAC 02B .0230	11:24 NCR 1818		11:30 NCR 2303	*						
15A NCAC 02B .0231	11:02 NCR 75		11:10 NCR 824	L/SE						
			11:14 NCR 1136							
15A NCAC 02B .0232	11:02 NCR 75		11:10 NCR 824	L						
			11:14 NCR 1136							
15A NCAC 02B .0233	11:02 NCR 75		12:06 NCR 462	S/L/SE						
		12:02 NCR 77	11:10 NCR 824	L						
			11:14 NCR 1136							
15A NCAC 02B .0234	11:02 NCR 75		12:06 NCR 462	S/L/SE						
			11:10 NCR 824	L						
			12:06 NCR 462	S/L/SE						
			11:10 NCR 824	*						
			11:14 NCR 1136							
15A NCAC 02B .0235	11:02 NCR 75		12:06 NCR 462	S/L/SE						
			11:10 NCR 824	*						
			11:14 NCR 1136							
15A NCAC 02B .0236	11:02 NCR 75		12:06 NCR 462	S/L/SE						
			11:10 NCR 824	L						
			11:14 NCR 1136							

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15A NCAC 02B .0238	11:02 NCR 75		12:06 NCR 462	S/L/SE						
15A NCAC 02B .0239	11:02 NCR 75		12:06 NCR 462	S/L/SE						
15A NCAC 02B .0240	11:02 NCR 75		12:06 NCR 462	S/L/SE						
15A NCAC 02B .0303	10:18 NCR 2400		12:06 NCR 462	S/L/SE						
15A NCAC 02B .0304	11:24 NCR 1818		11:12 NCR 973	*						
15A NCAC 02B .0304	11:26 NCR 1976		12:01 NCR 6	*						
15A NCAC 02B .0304	11:26 NCR 1984		12:01 NCR 6	S						
15A NCAC 02B .0304	11:26 NCR 1984		12:01 NCR 6	S						
15A NCAC 02B .0305	11:20 NCR 1534		12:05 NCR 414	*						
15A NCAC 02B .0306	11:26 NCR 1976		12:01 NCR 6	*						
15A NCAC 02B .0306	11:26 NCR 1984		12:01 NCR 6	*						
15A NCAC 02B .0307	11:26 NCR 1976		12:01 NCR 6	*						
15A NCAC 02B .0307	11:26 NCR 1984		12:01 NCR 6	*						
15A NCAC 02B .0308	11:20 NCR 1534		11:28 NCR 2121	*						
15A NCAC 02B .0308	11:26 NCR 1976		12:01 NCR 6	*						
15A NCAC 02B .0308	11:26 NCR 1984		12:01 NCR 6	*						
15A NCAC 02B .0309	11:26 NCR 1976		12:01 NCR 6	*						
15A NCAC 02B .0309	11:26 NCR 1984		12:01 NCR 6	*						
15A NCAC 02B .0311	11:26 NCR 1976		12:01 NCR 6	*						
15A NCAC 02B .0311	11:26 NCR 1984		12:01 NCR 6	*						
15A NCAC 02B .0313	11:24 NCR 1818		12:05 NCR 416	*						
15A NCAC 02B .0313	11:26 NCR 1976		12:01 NCR 6	*						
15A NCAC 02B .0313	11:26 NCR 1984		12:01 NCR 6	*						
15A NCAC 02B .0315	11:24 NCR 1818		12:01 NCR 6	*						
15A NCAC 02B .0316	11:20 NCR 1534		12:07 NCR 515	L						
15A NCAC 02B .0316	11:26 NCR 1976		12:01 NCR 6	*						
15A NCAC 02B .0316	11:26 NCR 1984		12:01 NCR 6	*						
15A NCAC 02B .0317	11:26 NCR 1976		12:01 NCR 6	*						
	11:26 NCR 1984		12:01 NCR 6	*						
15A NCAC 02D .0101	11:15 NCR 1200		12:04 NCR 270	*						

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15A NCAC 02D .0101	12:02 NCR 52									
15A NCAC 02D .0104	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .0105	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .0108	11:15 NCR 1200									
15A NCAC 02D .0202	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .0302	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .0307	11:15 NCR 1200									
15A NCAC 02D .0501	11:15 NCR 1200									
15A NCAC 02D .0518	11:19 NCR 1408									
15A NCAC 02D .0521	11:15 NCR 1200									
15A NCAC 02D .0524	11:15 NCR 1200									
15A NCAC 02D .0525	11:15 NCR 1200									
15A NCAC 02D .0531	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .0535	10:18 NCR 2317		11:16 NCR 1271	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02D .0610	11:15 NCR 1200									
15A NCAC 02D .0806	11:26 NCR 1976									
15A NCAC 02D .0902	11:19 NCR 1408									
15A NCAC 02D .0909	11:19 NCR 1408									
15A NCAC 02D .0912	11:15 NCR 1200									
15A NCAC 02D .0917	11:19 NCR 1408									
15A NCAC 02D .0918	11:19 NCR 1408									
15A NCAC 02D .0919	11:19 NCR 1408									
15A NCAC 02D .0920	11:19 NCR 1408									
15A NCAC 02D .0921	11:19 NCR 1408									
15A NCAC 02D .0922	11:19 NCR 1408									
15A NCAC 02D .0923	11:19 NCR 1408									
15A NCAC 02D .0924	11:19 NCR 1408									
15A NCAC 02D .0934	11:19 NCR 1408									
15A NCAC 02D .0938	12:02 NCR 52									
15A NCAC 02D .0948	11:19 NCR 1408									



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15A NCAC 02D .0949	11:19 NCR 1408									
15A NCAC 02D .0950	11:19 NCR 1408									
15A NCAC 02D .0951	11:19 NCR 1408									
15A NCAC 02D .0953	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .0953	11:26 NCR 1976									
15A NCAC 02D .0954	11:15 NCR 1200									
15A NCAC 02D .1005	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .1100	11:08 NCR 442									
15A NCAC 02D .1104	12:02 NCR 52	12:02 NCR 77								
15A NCAC 02D .1106	11:26 NCR 1976									
15A NCAC 02D .1107	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .1201	10:24 NCR 3045		11:16 NCR 1271	L/SE	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02D .1202	10:24 NCR 3045		11:16 NCR 1271	L/SE	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02D .1203	10:24 NCR 3045		11:16 NCR 1271	L/SE	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02D .1203	11:15 NCR 1200									
15A NCAC 02D .1204	10:24 NCR 3045		11:16 NCR 1271	L/SE	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02D .1204	11:04 NCR 183		12:04 NCR 270	*						
15A NCAC 02D .1205	10:24 NCR 3045		11:16 NCR 1271	L/SE	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02D .1206	10:24 NCR 3045		11:16 NCR 1271	L/SE	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02D .1206	11:04 NCR 183		12:04 NCR 270	*						
15A NCAC 02D .1207	10:24 NCR 3045		11:16 NCR 1271	L/SE	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02D .1208	10:24 NCR 3045		11:16 NCR 1271	L/SE	Approve	04/17/97	*		11:29 NCR 2211	
15A NCAC 02D .1209	10:24 NCR 3045		11:16 NCR 1271	L/SE	Approve	04/17/97	*		11:29 NCR 2211	
15A NCAC 02D .1305	11:04 NCR 183		12:04 NCR 270	*						
15A NCAC 02D .1500	11:19 NCR 1408									
15A NCAC 02D .1503	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .1603	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .1701	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .1702	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .1703	11:15 NCR 1200		12:04 NCR 270	L						

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15A NCAC 02D .1704	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .1705	11:15 NCR 1200		12:04 NCR 270	L						
15A NCAC 02D .1706	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .1707	11:15 NCR 1200		12:04 NCR 270	L						
15A NCAC 02D .1708	11:15 NCR 1200		12:04 NCR 270	L						
15A NCAC 02D .1709	11:15 NCR 1200		12:04 NCR 270	L						
15A NCAC 02D .1710	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02D .1700	12:02 NCR 52									
15A NCAC 02D .1902	11:19 NCR 1408		12:04 NCR 270	*						
15A NCAC 02D .1903	11:19 NCR 1408		12:04 NCR 270	*						
15A NCAC 02D .2200	11:26 NCR 1976									
15A NCAC 02H .0225	11:15 NCR 1200	11:15 NCR 1225 11:27 NCR 2073	11:20 NCR 1550 11:27 NCR 2073	*	Object Approve	07/17/97 08/21/97	*		12:07 NCR 561	
15A NCAC 02H .0610	11:08 NCR 442									
15A NCAC 02H .0610	12:02 NCR 52	12:02 NCR 77								
15A NCAC 02H .1202	11:15 NCR 1200									
15A NCAC 02H .1203	11:15 NCR 1200									
15A NCAC 02H .1204	11:15 NCR 1200									
15A NCAC 02H .1205	11:15 NCR 1200									
15A NCAC 02L	11:15 NCR 1200 11:15 NCR 1204									
15A NCAC 02L .0106		10:19 NCR 2508	11:21 NCR 1639	*						
15A NCAC 02L .0115	11:15 NCR 1200 11:15 NCR 1204		11:21 NCR 1639	L						
15A NCAC 02L .0202	10:20 NCR 2591									
15A NCAC 02N	11:15 NCR 1200									
15A NCAC 02N	11:15 NCR 1204									
15A NCAC 02N .0701	11:15 NCR 1200		11:21 NCR 1639	*						
15A NCAC 02N .0707	11:15 NCR 1204		11:21 NCR 1639	*						
15A NCAC 02P	11:15 NCR 1200									
15A NCAC 02P .0402	11:15 NCR 1204	10:19 NCR 2512	11:21 NCR 1639	*						

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15A NCAC 02Q .0102			11:06 NCR 350	*						
15A NCAC 02Q .0102	11:19 NCR 1408									
15A NCAC 02Q .0102	12:02 NCR 52									
15A NCAC 02Q .0103	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02Q .0108	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02Q .0201	12:02 NCR 52									
15A NCAC 02Q .0207	11:19 NCR 1408		12:04 NCR 270	*						
15A NCAC 02Q .0300	11:26 NCR 1976									
15A NCAC 02Q .0307	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02Q .0312	10:24 NCR 3045		11:16 NCR 1271	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02Q .0313	10:24 NCR 3045		11:16 NCR 1271	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02Q .0400	12:04 NCR 240									
15A NCAC 02Q .0521	11:15 NCR 1200		12:04 NCR 270	*						
15A NCAC 02Q .0525	10:24 NCR 3045		11:16 NCR 1271	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02Q .0527	10:24 NCR 3045		11:16 NCR 1271	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02Q .0607	10:24 NCR 3045		11:16 NCR 1271	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 02Q .0700	11:08 NCR 442									
15A NCAC 02Q .0801	12:02 NCR 52									
15A NCAC 02Q .0803	12:02 NCR 52									
15A NCAC 02Q .0805	10:18 NCR 2317		12:04 NCR 270	S						
15A NCAC 02Q .0806	10:24 NCR 3045		12:04 NCR 270	S						
15A NCAC 02Q .0807	10:24 NCR 3045		12:04 NCR 270	*						
15A NCAC 02R .0100	12:02 NCR 52									
15A NCAC 02R .0200	12:02 NCR 52									
15A NCAC 02R .0300	12:02 NCR 52									
15A NCAC 02R .0400	12:02 NCR 52									
15A NCAC 02R .0500	12:02 NCR 52									
15A NCAC 02R .0501		11:27 NCR 2075								
15A NCAC 02R .0502		11:27 NCR 2075								
15A NCAC 02R .0503		11:27 NCR 2075								



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15A NCAC 02R .0504		11:27 NCR 2075								
15A NCAC 02R .0600	12:02 NCR 52									
<b>Health Services, Commission for</b>										
15A NCAC 13A .0100	12:02 NCR 52									
15A NCAC 13A .0101	11:16 NCR 1269		11:20 NCR 1552	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 13A .0101	N/A		N/A		Approve	07/17/97			12:04 NCR 317	
15A NCAC 13A .0105	11:16 NCR 1269		11:20 NCR 1552	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 13A .0107	11:16 NCR 1269		11:20 NCR 1552	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 13A .0109	12:07 NCR 509									
15A NCAC 13A .0110	12:07 NCR 509									
15A NCAC 13A .0111	11:16 NCR 1269		11:20 NCR 1552	*	Approve	04/17/97				
15A NCAC 13A .0111	12:07 NCR 509									
15A NCAC 13A .0112	11:16 NCR 1269		11:20 NCR 1552	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 13A .0119	11:16 NCR 1269		11:20 NCR 1552	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 13B .1627	11:08 NCR 442		11:13 NCR 1055	*						
15A NCAC 13B .1800	11:08 NCR 442									
15A NCAC 13B .1800	11:26 NCR 1976									
15A NCAC 18A	11:04 NCR 183									
15A NCAC 18A .0134	11:08 NCR 442		11:12 NCR 987	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .0168	11:08 NCR 442		11:12 NCR 987	*	Approve	01/16/97	*		11:22 NCR 1717	
15A NCAC 18A .0176	11:08 NCR 442		11:12 NCR 987	*	Object	12/19/96				
15A NCAC 18A .0182	11:08 NCR 442		11:12 NCR 987	*	Approve	01/16/97			11:22 NCR 1717	
15A NCAC 18A .0183	11:08 NCR 442		11:12 NCR 987	*	Object	12/19/96	*		11:22 NCR 1717	
15A NCAC 18A .0185	11:08 NCR 442		11:12 NCR 987	*	Approve	01/16/97	*		11:22 NCR 1717	
15A NCAC 18A .0187	11:08 NCR 442		11:12 NCR 987	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .0301	11:08 NCR 442		11:12 NCR 987	*	Approve	01/16/97	*		11:22 NCR 1717	
15A NCAC 18A .0421	11:08 NCR 442		11:12 NCR 987	*	Object	12/19/96	*		11:22 NCR 1717	

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15A NCAC 18A .0614	11:08 NCR 442		11:12 NCR 987	*	Approve	01/16/97	*		11:22 NCR 1717	
15A NCAC 18A .0618	11:08 NCR 442		11:12 NCR 987	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .0621	11:08 NCR 442		11:12 NCR 987	*	Approve	01/16/97			11:22 NCR 1717	
15A NCAC 18A .0901	11:08 NCR 442		11:12 NCR 987	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .1301	11:08 NCR 442		11:12 NCR 987	*	Approve	01/16/97			11:22 NCR 1717	
15A NCAC 18A .1301	11:08 NCR 442		11:12 NCR 987	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .1319	11:08 NCR 442		11:12 NCR 987	*	Approve	01/16/97			11:22 NCR 1717	
15A NCAC 18A .1937	11:19 NCR 1408	11:20 NCR 1561	12:02 NCR 61	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .1938	11:19 NCR 1408	11:20 NCR 1561	12:02 NCR 61	*	Approve	01/16/97			11:22 NCR 1717	
15A NCAC 18A .1958	11:19 NCR 1408	11:20 NCR 1561	12:02 NCR 61	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .1961	11:19 NCR 1408	11:20 NCR 1561	12:02 NCR 61	*	Approve	01/16/97			11:22 NCR 1717	
15A NCAC 18A .2301	12:03 NCR 168		12:07 NCR 519	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .2302	12:03 NCR 168		12:07 NCR 519	*	Approve	01/16/97			11:22 NCR 1717	
15A NCAC 18A .2303	12:03 NCR 168		12:07 NCR 519	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .2304	12:03 NCR 168		12:07 NCR 519	*	Approve	01/16/97			11:22 NCR 1717	
15A NCAC 18A .2305	12:03 NCR 168		12:07 NCR 519	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .2306	12:03 NCR 168		12:07 NCR 519	*	Approve	01/16/97			11:22 NCR 1717	
15A NCAC 18A .2307	12:03 NCR 168		12:07 NCR 519	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .2308	12:03 NCR 168		12:07 NCR 519	*	Approve	01/16/97			11:22 NCR 1717	
15A NCAC 18A .2309	12:03 NCR 168		12:07 NCR 519	*	Object	12/19/96			11:22 NCR 1717	
15A NCAC 18A .2310	12:03 NCR 168		12:07 NCR 519	*	Approve	01/16/97			11:22 NCR 1717	
15A NCAC 18A .2600	12:04 NCR 240				Approve	01/16/97			11:22 NCR 1717	
15A NCAC 19A .0101	11:26 NCR 1976		12:02 NCR 61	S/L						
15A NCAC 19A .0101	12:02 NCR 52	12:02 NCR 88								
15A NCAC 19A .0102	11:26 NCR 1976		12:02 NCR 61	S/L						
15A NCAC 19A .0201	11:26 NCR 1976		12:02 NCR 61	*						
15A NCAC 19A .0203	11:21 NCR 1638		12:02 NCR 61	*						
15A NCAC 19A .0205	11:26 NCR 1976		12:02 NCR 61	*						

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15A NCAC 19C .0801		12:01 NCR 31								
15A NCAC 19C .0802		12:01 NCR 31								
15A NCAC 19C .0803		12:01 NCR 31								
15A NCAC 21I .0101		11:07 NCR 422	11:20 NCR 1552	*	Approve	04/17/97	*		11:29 NCR 2211	
15A NCAC 21J .0101		11:07 NCR 422	11:20 NCR 1552	*	Approve	04/17/97	*		11:29 NCR 2211	
15A NCAC 24A .0202		11:24 NCR 1827	12:02 NCR 61	S						
15A NCAC 24A .0202		12:01 NCR 31	12:07 NCR 519	S						
15A NCAC 26C .0001	11:19 NCR 1408									
15A NCAC 26C .0002	11:19 NCR 1408									
15A NCAC 26C .0003	11:19 NCR 1408									
15A NCAC 26C .0004	11:19 NCR 1408									
15A NCAC 26C .0005	11:19 NCR 1408									
15A NCAC 26C .0006	11:19 NCR 1408									
15A NCAC 26C .0007	11:19 NCR 1408									
<b>Marine Fisheries Commission</b>										
15A NCAC 03	11:11 NCR 881									
15A NCAC 03	11:20 NCR 1537									
15A NCAC 03	11:26 NCR 1985									
15A NCAC 03I .0101	11:26 NCR 1976		12:05 NCR 418	*						
15A NCAC 03I .0117	11:26 NCR 1976	11:26 NCR 2000	12:05 NCR 418	*						
15A NCAC 03J .0103	11:26 NCR 1976		12:05 NCR 418	*						
15A NCAC 03J .0104	11:26 NCR 1976		12:05 NCR 418	*						
15A NCAC 03J .0202	11:07 NCR 407		11:11 NCR 888	*						
15A NCAC 03J .0202	11:26 NCR 1976		12:05 NCR 418	*						
15A NCAC 03J .0208	11:26 NCR 1976		12:05 NCR 418	*						
15A NCAC 03J .0301	11:26 NCR 1976		12:05 NCR 418	*						
15A NCAC 03L .0102	11:07 NCR 407		11:11 NCR 888	*						
15A NCAC 03M .0204		11:14 NCR 1153	11:18 NCR 1371	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 03M .0503		11:18 NCR 1383	11:26 NCR 1988	*	Approve	08/21/97			12:07 NCR 561	
15A NCAC 03M .0503	11:20 NCR 1537	12:05 NCR 431	12:05 NCR 418	*						



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15A NCAC 03M .0506		11:18 NCR 1383	11:26 NCR 1988	*	Approve	08/21/97	*		12.07 NCR 561	
15A NCAC 03M .0506	11:26 NCR 1976		12:05 NCR 418	*						
15A NCAC 03M .0507		11:11 NCR 938 Temp Expired	11:26 NCR 1988	*	Approve	08/21/97			12.07 NCR 561	
15A NCAC 03M .0513	11:26 NCR 1976		12:05 NCR 418	*						
15A NCAC 03M .0514		11:18 NCR 1383	11:26 NCR 1088	*	Approve	08/21/97			12.07 NCR 561	
15A NCAC 03O .0204	N/A	N/A	N/A		Approve	08/21/97			12.07 NCR 561	
15A NCAC 03O .0211	11:26 NCR 1976		12:05 NCR 418	*						
<b>Parks and Recreation Commission</b>										
15A NCAC 12K .0101	12:02 NCR 52									
15A NCAC 12K .0103	12:02 NCR 52									
15A NCAC 12K .0104	12:02 NCR 52									
15A NCAC 12K .0105	12:02 NCR 52									
<b>Radiation Protection</b>										
15A NCAC 11 .0100	12:04 NCR 240									
15A NCAC 11 .0300	12:04 NCR 240									
15A NCAC 11 .0400	12:04 NCR 240									
15A NCAC 11 .1100	12:04 NCR 240									
15A NCAC 11 .1400	12:04 NCR 240									
15A NCAC 11 .1600	12:04 NCR 240									
<b>Water Pollution Control System Operators Certification Commission</b>										
15A NCAC 08A	11:26 NCR 1976									
15A NCAC 08H	11:26 NCR 1976									
15A NCAC 08C	11:26 NCR 1976									
15A NCAC 08D	11:26 NCR 1976									
15A NCAC 08E	11:26 NCR 1976									
15A NCAC 08F	11:26 NCR 1976									
15A NCAC 08F .0101		11:19 NCR 1442	11:28 NCR 2123	*						
15A NCAC 08F .0102		11:19 NCR 1442	11:28 NCR 2123	*						
15A NCAC 08F .0201		11:19 NCR 1442	11:28 NCR 2123	S						

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15A NCAC 08F.0202		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0203		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0301		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0401		11:19 NCR 1442	11:28 NCR 2123	*						
15A NCAC 08F.0402		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0403		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0404		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0405		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0406		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0407		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0501		11:19 NCR 1442	11:28 NCR 2123	*						
15A NCAC 08F.0502		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0503		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0504		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0505		11:19 NCR 1442	11:28 NCR 2123	S						
15A NCAC 08F.0506		11:19 NCR 1442	11:28 NCR 2123	*						
<b>Wildlife Resources Commission</b>										
15A NCAC 10B.0100	12:06 NCR 445									
15A NCAC 10B.0115	11:11 NCR 882	Agency Withdraw Rule-making								
15A NCAC 10B.0116	11:12 NCR 959		11:18 NCR 1372	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 10B.0200	12:06 NCR 445									
15A NCAC 10B.0208	11:02 NCR 76		11:08 NCR 495	*	Agency Withdraw Rule-making					
15A NCAC 10B.0300	12:06 NCR 445									
15A NCAC 10B.0400	12:06 NCR 445									
15A NCAC 10C.0101	12:06 NCR 445									
15A NCAC 10C.0102	12:06 NCR 445									
15A NCAC 10C.0103	12:06 NCR 445									
15A NCAC 10C.0104	12:06 NCR 445									
15A NCAC 10C.0105	12:06 NCR 445									
15A NCAC 10C.0106	12:06 NCR 445									

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15A NCAC 10C .0107	11:02 NCR 76	Agency Withdraw Rule-making								
15A NCAC 10C .0107	12:06 NCR 445									
15A NCAC 10C .0108	12:06 NCR 445									
15A NCAC 10C .0109	12:06 NCR 445									
15A NCAC 10C .0110	12:06 NCR 445									
15A NCAC 10C .0111	12:06 NCR 445									
15A NCAC 10C .0203	12:06 NCR 445									
15A NCAC 10C .0205	12:06 NCR 445									
15A NCAC 10C .0206	12:06 NCR 445									
15A NCAC 10C .0211	12:06 NCR 445									
15A NCAC 10C .0212	12:06 NCR 445									
15A NCAC 10C .0215	12:06 NCR 445									
15A NCAC 10C .0302	12:06 NCR 445									
15A NCAC 10C .0304	12:06 NCR 445									
15A NCAC 10C .0305	12:06 NCR 445									
15A NCAC 10C .0401	11:02 NCR 76									
15A NCAC 10C .0401	11:07 NCR 408									
15A NCAC 10C .0401	12:06 NCR 445									
15A NCAC 10C .0402	12:06 NCR 445									
15A NCAC 10C .0404	12:06 NCR 445									
15A NCAC 10C .0407	12:06 NCR 445									
15A NCAC 10D .0001	12:06 NCR 445									
15A NCAC 10D .0002	11:02 NCR 76									
15A NCAC 10D .0002	12:06 NCR 445									
15A NCAC 10D .0003	12:06 NCR 445									
15A NCAC 10D .0004	12:06 NCR 445									
15A NCAC 10E .0001	12:06 NCR 445									
15A NCAC 10E .0002	12:06 NCR 445									
15A NCAC 10E .0003	12:06 NCR 445									
15A NCAC 10E .0004	12:06 NCR 445									
			11:08 NCR 495	*				Agency Withdraw Rule-making		



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15A NCAC 10F .0100	12:06 NCR 445									
15A NCAC 10F .0300	11:01 NCR 13	Agency Withdraw Rule-making								
15A NCAC 10F .0302	11:05 NCR 272		11:14 NCR 1150	*	Approve	03/20/97	*		11:26 NCR 2004	
15A NCAC 10F .0307	11:08 NCR 451		11:14 NCR 1150	*	Approve	03/20/97	*		11:26 NCR 2004	
15A NCAC 10F .0308	11:21 NCR 1638		11:29 NCR 2206	*						
15A NCAC 10F .0311	12:01 NCR 5		12:07 NCR 517	*						
15A NCAC 10F .0317	11:13 NCR 1039		11:19 NCR 1427	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 10F .0318	12:06 NCR 445									
15A NCAC 10F .0327	11:14 NCR 1109		11:20 NCR 1551	*	Approve	04/17/97	*		11:29 NCR 2211	
15A NCAC 10F .0330	12:05 NCR 337									
15A NCAC 10F .0333	12:01 NCR 5		12:07 NCR 517	*						
15A NCAC 10F .0339	11:13 NCR 1039		11:19 NCR 1427	*	Approve	04/17/97			11:29 NCR 2211	
15A NCAC 10F .0339	11:21 NCR 1638		11:29 NCR 2206	*						
15A NCAC 10F .0339	12:05 NCR 337									
15A NCAC 10F .0345	12:06 NCR 445									
15A NCAC 10F .0347	12:06 NCR 445									
15A NCAC 10F .0355	11:25 NCR 1905		12:01 NCR 18	*						
15A NCAC 10F .0360	12:01 NCR 5		12:07 NCR 517	*						
15A NCAC 10F .0367	11:16 NCR 1269									
15A NCAC 10G	11:01 NCR 13	Agency Withdraw Rule-making								
15A NCAC 10G .0100	11:02 NCR 76	Agency Withdraw Rule-making								
15A NCAC 10G .0400	12:06 NCR 445									
15A NCAC 10H .0100	12:06 NCR 445									
15A NCAC 10H .0300	12:06 NCR 445									
15A NCAC 10H .0800	12:06 NCR 445									
15A NCAC 10H .0900	12:06 NCR 445									
15A NCAC 10H .1000	12:06 NCR 445									
15A NCAC 10H .1100	12:06 NCR 445									
15A NCAC 10H .1200	12:06 NCR 445									
15A NCAC 10I .0001	12:06 NCR 445									

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15A NCAC 101 .0002 12:06 NCR 445  
 15A NCAC 101 .0003 12:06 NCR 445  
 15A NCAC 101 .0004 12:06 NCR 445  
 15A NCAC 101 .0005 12:06 NCR 445  
 15A NCAC 101 .0001 12:06 NCR 445  
 15A NCAC 101 .0002 12:06 NCR 445  
 15A NCAC 101 .0003 12:06 NCR 445  
 15A NCAC 101 .0004 12:06 NCR 445

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 Voting Rights Act  
 Voting Rights Act  
 Voting Rights Act  
 Voting Rights Act

12:01 NCR 4  
 12:02 NCR 50  
 12:04 NCR 236  
 12:05 NCR 334  
 12:07 NCR 507

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21 NCAC 12 .0202 11:24 NCR 1828  
 21 NCAC 12 .0204 11:28 NCR 2117  
 21 NCAC 12 .0503 11:28 NCR 2117  
 21 NCAC 12 .0504 11:28 NCR 2117  
 21 NCAC 12 .0901 11:28 NCR 2117  
 21 NCAC 12 .0902 11:28 NCR 2117  
 21 NCAC 12 .0903 11:28 NCR 2117  
 21 NCAC 12 .0904 11:28 NCR 2117  
 21 NCAC 12 .0905 11:28 NCR 2117  
 21 NCAC 12 .0906 11:28 NCR 2117  
 21 NCAC 12 .0907 11:28 NCR 2117  
 21 NCAC 12 .0908 11:28 NCR 2117  
 21 NCAC 12 .0909 11:28 NCR 2117  
 21 NCAC 12 .0910 11:28 NCR 2117

\* 12:07 NCR 524  
 \* 12:04 NCR 292  
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21 NCAC 12 .0911 11:28 NCR 2117

21 NCAC 12 .0912 11:28 NCR 2117

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Number 112 - Eff. 05/22/97

Number 113 - Eff. 06/12/97

Number 114 - Eff. 06/26/97

Number 115 - Eff. 07/03/97

Number 116 - Eff. 07/21/97

Number 117 - Eff. 09/07/97

12:01 NCR 1  
12:01 NCR 1  
12:03 NCR 110  
12:03 NCR 110  
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24 NCAC 01P .0101

24 NCAC 01P .0102

24 NCAC 01P .0103

24 NCAC 01P .0201

24 NCAC 01P .0202

24 NCAC 01P .0203

11:14 NCR 1154  
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12:04 NCR 317  
12:04 NCR 317  
  
12:07 NCR 561  
12:04 NCR 317  
12:04 NCR 317  
12:04 NCR 317

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## HUMAN RESOURCES

10 NCAC 01B 11:23 NCR 1779

### Aging

10 NCAC 22 10:23 NCR 2956

### Child Day Care Commission

10 NCAC 03U .0302 11:24 NCR 1817

10 NCAC 03U .0506 11:24 NCR 1817

10 NCAC 03U .0509 11:24 NCR 1817

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10 NCAC 03U .0602 11:24 NCR 1817

10 NCAC 03U .0604 11:03 NCR 109

10 NCAC 03U .0604 11:24 NCR 1817

10 NCAC 03U .0605 11:24 NCR 1817

10 NCAC 03U .0700 11:08 NCR 449

11:09 NCR 571  
  
\*  
  
Approve  
03/20/97  
  
11:26 NCR 2004



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10 NCAC 03U .0705	11:14 NCR 1108		11:27 NCR 2054	*						
10 NCAC 03U .0705	11:24 NCR 1817									
10 NCAC 03U .0707	11:08 NCR 449		11:17 NCR 1338	*	Object Approve	03/20/97 04/17/97	*		11:29 NCR 2211	
10 NCAC 03U .0714	11:24 NCR 1817									
10 NCAC 03U .0802	11:24 NCR 1817									
10 NCAC 03U .0803	11:24 NCR 1817									
10 NCAC 03U .0901	11:08 NCR 449		11:17 NCR 1338	*						
10 NCAC 03U .1402	11:24 NCR 1817									
10 NCAC 03U .1403	11:24 NCR 1817									
10 NCAC 03U .1717	11:14 NCR 1108		11:27 NCR 2054	*						
10 NCAC 03U .1717	11:24 NCR 1817									
10 NCAC 03U .2500	11:29 NCR 2181									
10 NCAC 03U .2510	11:08 NCR 449									
10 NCAC 03U .2603	11:24 NCR 1817									
10 NCAC 03U .2606	11:08 NCR 449									
10 NCAC 03U .2610	11:24 NCR 1817									
10 NCAC 03U .2611	11:24 NCR 1817									
<b>Facility Services</b>										
Public Notice - Draft 1998 State Medical Facilities Plan										
Abbreviated Notice of Temporary Rule-making										
10 NCAC 03	10:18 NCR 2399									12:01 NCR 2
10 NCAC 03R .3000	11:23 NCR 1780									12:06 NCR 443
10 NCAC 03R .3001	10:23 NCR 2956		11:06 NCR 328	S/L/SE						
10 NCAC 03R .3002		11:21 NCR 1655	12:04 NCR 246	*						
10 NCAC 03R .3020	10:23 NCR 2956		11:06 NCR 328	S/L/SE	Object Approve	11/21/96 03/20/97	*		11:26 NCR 2004	
10 NCAC 03R .3030	10:23 NCR 2956		11:06 NCR 328	S/L/SE	Object Approve	10/17/96 11/21/96 03/20/97	*			11:11 NCR 888
10 NCAC 03R .3030		10:21 NCR 2699	11:08 NCR 452	S/L/SE	Object Approve		*		11:26 NCR 2004	

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					Action	Date				
10 NCAC 03R .3031	11:23 NCR 1780		11:08 NCR 459		Extend Review	03/20/97	*			
10 NCAC 03R .3032	10:23 NCR 2956		11:06 NCR 328	S/L/SE	Approve	08/21/97	*		12:07 NCR 561	
10 NCAC 03R .3033		10:21 NCR 2699	11:08 NCR 452	S/L/SE	Object	01/16/97				
10 NCAC 03R .3034		10:21 NCR 2699	11:08 NCR 452	S/L/SE	Extend Review	03/20/97				
10 NCAC 03R .3035		10:21 NCR 2699	11:08 NCR 452	S/L/SE	Approve	08/21/97	*		12:07 NCR 561	
10 NCAC 03R .3036		10:21 NCR 2699	11:08 NCR 452	S/L/SE	Object	01/16/97				
10 NCAC 03R .3037		10:21 NCR 2699	11:08 NCR 452	S/L/SE	Return to agency	03/20/97				
10 NCAC 03R .3038		10:21 NCR 2699	11:08 NCR 452	S/L/SE	Object	01/16/97				
10 NCAC 03R .3040	10:23 NCR 2956		11:06 NCR 328	S/L/SE	Return to agency	03/20/97				
10 NCAC 03R .3050	10:23 NCR 2956		11:06 NCR 328	S/L/SE	Object	01/16/97				
10 NCAC 03R .3051		11:21 NCR 1655	12:04 NCR 246	*	Return to agency	03/20/97				
10 NCAC 03R .3052		11:21 NCR 1655	12:04 NCR 246	*	Object	01/16/97				
10 NCAC 03R .3053		11:21 NCR 1655	12:04 NCR 246	*	Return to agency	03/20/97				
10 NCAC 03R .3053		11:22 NCR 1713			Object	01/16/97				
10 NCAC 03R .3053		12:06 NCR 481			Return to agency	03/20/97				
10 NCAC 03R .3054		11:21 NCR 1655	12:04 NCR 246	*	Object	01/16/97				
10 NCAC 03R .3055		11:21 NCR 1655	12:04 NCR 246	*	Return to agency	03/20/97				
10 NCAC 03R .3056		11:21 NCR 1655	12:04 NCR 246	*	Object	01/16/97				
10 NCAC 03R .3057		11:21 NCR 1655	12:04 NCR 246	*	Return to agency	03/20/97				
10 NCAC 03R .3058		11:21 NCR 1655	12:04 NCR 246	*	Object	01/16/97				
10 NCAC 03R .3059		11:21 NCR 1655	12:04 NCR 246	*	Return to agency	03/20/97				
10 NCAC 03R .3060		11:21 NCR 1655	12:04 NCR 246	*	Object	01/16/97				
10 NCAC 03R .3060		12:06 NCR 481			Return to agency	03/20/97				
10 NCAC 03R .3061		11:21 NCR 1655	12:04 NCR 246	*						
10 NCAC 03R .3061		12:06 NCR 481								
10 NCAC 03R .3062		11:21 NCR 1655	12:04 NCR 246	*						
10 NCAC 03R .3062		12:06 NCR 481								

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10 NCAC 03R .3063		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3063		12-06 NCR 481								
10 NCAC 03R .3064		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3064		12-06 NCR 481								
10 NCAC 03R .3065		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3065		12-06 NCR 481								
10 NCAC 03R .3066		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3066		12-06 NCR 481								
10 NCAC 03R .3067		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3068		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3069		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3070		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3071		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3072		11-21 NCR 1655	12-04 NCR 246	S/L/SE						
10 NCAC 03R .3072		12-06 NCR 481								
10 NCAC 03R .3073		11-21 NCR 1655	12-04 NCR 246	S/L/SE						
10 NCAC 03R .3074		11-21 NCR 1655	12-04 NCR 246	S/L/SE						
10 NCAC 03R .3075		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3076		11-21 NCR 1655	12-04 NCR 246	S/L/SE						
10 NCAC 03R .3077		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3078		11-21 NCR 1655	12-04 NCR 246	S/L/SE						
10 NCAC 03R .3079		11-21 NCR 1655	12-04 NCR 246	S/L/SE						
10 NCAC 03R .3080		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3081		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3082		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3083		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3084		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3085		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3086		11-21 NCR 1655	12-04 NCR 246	*						
10 NCAC 03R .3087		11-21 NCR 1655	12-04 NCR 246	*						



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10 NCAC 03R .3088		11:21 NCR 1655	12:04 NCR 246	*						
10 NCAC 03R .6001	11:22 NCR 1704									
<b>Medical Assistance</b>										
Medicaid Disproportionate Share List										
10 NCAC 26B .0113	10:16 NCR 1721		11:28 NCR 2118	S/L						12:02 NCR 46
10 NCAC 26B .0123		11:19 NCR 1436	11:24 NCR 1824	*	Approve	06/19/97	*		12:03 NCR 213	
10 NCAC 26D .0110	12:06 NCR 444									
10 NCAC 26G .0707	11:08 NCR 450	11:15 NCR 1205	11:18 NCR 1371	*	Approve	04/17/97			11:29 NCR 2211	
10 NCAC 26H .0101	11:14 NCR 1108									
10 NCAC 26H .0102	11:14 NCR 1108									
10 NCAC 26H .0104	11:16 NCR 1268		11:23 NCR 1781	S/L	Approve	05/15/97	*		11:30 NCR 2314	
10 NCAC 26H .0212		11:15 NCR 1205	Temp Expired							
10 NCAC 26H .0213		11:15 NCR 1205	Temp Expired							
10 NCAC 26H .0213	11:18 NCR 1368	11:26 NCR 1997	12:07 NCR 511	S/SE						
10 NCAC 26H .0213										
10 NCAC 26H .0506	10:21 NCR 2686									
10 NCAC 26H .0506		11:19 NCR 1438	11:29 NCR 2205	S/L/SE						
10 NCAC 26H .0602		12:04 NCR 313								
10 NCAC 26K .0106	12:05 NCR 337									
10 NCAC 26K .0106	12:06 NCR 444									
10 NCAC 26M .0201	12:06 NCR 444									
10 NCAC 26M .0202	12:06 NCR 444									
10 NCAC 26M .0203	12:05 NCR 337									
10 NCAC 26M .0203	12:06 NCR 444									
10 NCAC 26M .0204	12:06 NCR 444									
10 NCAC 50A .0604	12:06 NCR 444									
10 NCAC 50B .0202		11:10 NCR 841	11:28 NCR 2118	*	Approve	07/17/97	*		12:04 NCR 317	
10 NCAC 50B .0202	12:06 NCR 444									
10 NCAC 50B .0404		11:10 NCR 841	11:28 NCR 2118	L	Approve	07/17/97			12:04 NCR 317	
10 NCAC 50B .0409		11:10 NCR 841	11:28 NCR 2118	*	Approve	07/17/97			12:04 NCR 317	

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10 NCAC 50D .0101	10:24 NCR 3057	11:04 NCR 196	Temp Expired							
10 NCAC 50D .0102	10:24 NCR 3057	11:04 NCR 196	Temp Expired							
10 NCAC 50D .0103	10:24 NCR 3057	11:04 NCR 196	Temp Expired							
10 NCAC 50D .0201	10:24 NCR 3057	11:04 NCR 196	Temp Expired							
10 NCAC 50D .0301	10:24 NCR 3057	11:04 NCR 196	Temp Expired							
10 NCAC 50D .0302	10:24 NCR 3057	11:04 NCR 196	Temp Expired							
10 NCAC 50D .0401	10:24 NCR 3057	11:04 NCR 196	Temp Expired							
10 NCAC 50D .0402	10:24 NCR 3057	11:04 NCR 196	Temp Expired							
10 NCAC 50D .0501	10:24 NCR 3057	11:04 NCR 196	Temp Expired							
10 NCAC 50D .0502	10:24 NCR 3057	11:04 NCR 196	Temp Expired							
10 NCAC 50D .0503	10:24 NCR 3057	11:04 NCR 196	Temp Expired							
<b>Medical Care Commission</b>										
10 NCAC 03B	11:16 NCR 1268									
10 NCAC 03B .1001		11:20 NCR 1560	11:29 NCR 2187	*						
10 NCAC 03B .1002		11:20 NCR 1560	11:29 NCR 2187	*						
10 NCAC 03C .3707	11:20 NCR 1534		11:29 NCR 2187	*						
10 NCAC 03D .0801	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0802	11:23 NCR 1779		12:05 NCR 339	S/L						
10 NCAC 03D .0803	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0806	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0901	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0902	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0904	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0905	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0907	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0908	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0909	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0911	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0913	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0915	11:23 NCR 1779		12:05 NCR 339	*						

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10 NCAC 03D .0916	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0917	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0918	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0919	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0920	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0921	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0922	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0923	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0924	11:23 NCR 1779		12:05 NCR 339	S/L						
10 NCAC 03D .0925	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .0926	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .1001	11:23 NCR 1779		12:05 NCR 339	S/L						
10 NCAC 03D .1002	11:23 NCR 1779		12:05 NCR 339	S/L						
10 NCAC 03D .1003	11:23 NCR 1779		12:05 NCR 339	S/L						
10 NCAC 03D .1004	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .1103	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .1202	11:23 NCR 1779		12:05 NCR 339	S/L						
10 NCAC 03D .1203	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .1204	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .1205	11:23 NCR 1779		12:05 NCR 339	S/L						
10 NCAC 03D .1206	11:23 NCR 1779		12:05 NCR 339	S/L						
10 NCAC 03D .1301	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .1302	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .1401	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .1403	11:23 NCR 1779		12:05 NCR 339	*						
10 NCAC 03D .1500	11:23 NCR 1779									
10 NCAC 03D .2001	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D .2101	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D .2102	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D .2103	10:18 NCR 2399		11:29 NCR 2187	*						



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10 NCAC 03D 2104	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D 2105	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D 2106	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D 2201	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D 2202	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D 2203	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D 2301	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D 2302	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D 2303	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03D 2401	10:18 NCR 2399		11:29 NCR 2187	*						
10 NCAC 03M 0105	11:23 NCR 1779		12:06 NCR 459	*						
10 NCAC 03M 0205	11:23 NCR 1779		12:06 NCR 459	*						
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10 NCAC 14V 3402	11:08 NCR 449		11:14 NCR 1124	*	Withdrawn	01/16/97			11:30 NCR 2314	
10 NCAC 14V 3803	11:08 NCR 449		11:24 NCR 1822	*	Approve	05/15/97	*			
10 NCAC 14V 5602	11:08 NCR 449		11:24 NCR 1822	*	Withdrawn	01/16/97	*		11:30 NCR 2314	
10 NCAC 15A 0128	11:08 NCR 449		11:24 NCR 1822	*	Approve	05/15/97			11:30 NCR 2314	
10 NCAC 15A 0129	11:08 NCR 449		11:24 NCR 1822	*	Withdrawn	01/16/97			11:30 NCR 2314	
10 NCAC 18W 0201	10:15 NCR 1478		11:24 NCR 1822	S	Approve	05/15/97			11:30 NCR 2314	
10 NCAC 18W 0202	10:15 NCR 1478		11:14 NCR 1124	S	Object	02/20/97	*		11:30 NCR 2314	
10 NCAC 18W 0203	10:15 NCR 1478		11:14 NCR 1124	S	Approve	01/16/97	*			
10 NCAC 18W 0204	10:15 NCR 1478		11:14 NCR 1124	S	Object	01/16/97	*			
10 NCAC 18W 0205	10:15 NCR 1478		11:14 NCR 1124	S	Approve	02/20/97	*			
10 NCAC 18W 0206	10:15 NCR 1478		11:14 NCR 1124	S	Object	01/16/97	*			
10 NCAC 18W 0207	10:15 NCR 1478		11:14 NCR 1124	S	Approve	01/16/97	*			
10 NCAC 18W 0208	10:15 NCR 1478		11:14 NCR 1124	S	Approve	01/16/97	*			
10 NCAC 18W 0209	10:15 NCR 1478		11:14 NCR 1124	S	Approve	01/16/97	*			

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					Action	Date				
10 NCAC 18W .0210	10:15 NCR 1478		11:14 NCR 1124	S	Approve	01/16/97	*			
10 NCAC 18W .0211	10:15 NCR 1478		11:14 NCR 1124	S	Object	01/16/97				
10 NCAC 18W .0212	10:15 NCR 1478		11:14 NCR 1124	S	Approve	02/20/97	*			
10 NCAC 18W .0213	10:15 NCR 1478		11:14 NCR 1124	S	Approve	01/16/97	*			
10 NCAC 18W .0214	10:15 NCR 1478		11:14 NCR 1124	S	Approve	01/16/97	*			
10 NCAC 18W .0215	10:15 NCR 1478		11:14 NCR 1124	S	Object	01/16/97				
10 NCAC 18W .0216	10:15 NCR 1478		11:14 NCR 1124	S	Approve	02/20/97	*			
10 NCAC 18W .0217	10:15 NCR 1478		11:14 NCR 1124	S	Object	01/16/97				
10 NCAC 18W .0218	10:15 NCR 1478		11:14 NCR 1124	S	Approve	02/20/97	*			
10 NCAC 18W .0219	10:15 NCR 1478		11:14 NCR 1124	S	Approve	01/16/97	*			
10 NCAC 4511 .0200	11:08 NCR 449		11:14 NCR 1124	S	Object	01/16/97				
10 NCAC 4511 .0203	11:08 NCR 449	11:29 NCR 2208	11:29 NCR 2208	*	Approve	02/20/97	*			
<b>Secretary of Human Resources</b>										
10 NCAC 14V .7006		12:01 NCR 31	12:07 NCR 511	*						
10 NCAC 14V .7101	11:30 NCR 2300		12:06 NCR 459	*						
10 NCAC 14V .7102	11:30 NCR 2300		12:06 NCR 459	*						
10 NCAC 14V .7103	11:30 NCR 2300		12:06 NCR 459	S						
10 NCAC 14V .7104	11:30 NCR 2300		12:06 NCR 459	S						
10 NCAC 14V .7105	11:30 NCR 2300		12:06 NCR 459	S						
<b>Social Services Commission</b>										
10 NCAC 35E .0101		11:16 NCR 1288	11:30 NCR 2301	*	Approve	08/21/97	*		12:07 NCR 561	
10 NCAC 35E .0105		11:16 NCR 1288	11:30 NCR 2301	*	Approve	08/21/97	*		12:07 NCR 561	
10 NCAC 35E .0106		11:16 NCR 1288	11:30 NCR 2301	*	Approve	08/21/97	*		12:07 NCR 561	
10 NCAC 35E .0308		11:16 NCR 1288	11:30 NCR 2301	*	Approve	08/21/97	*		12:07 NCR 561	
10 NCAC 411 .0100	10:17 NCR 2228									
10 NCAC 411 .0102	10:17 NCR 2228	11:16 NCR 1288	10:21 NCR 2687	*						
10 NCAC 421 .0001		11:16 NCR 1288	11:30 NCR 2301	*	Approve	08/21/97	*		12:07 NCR 561	
10 NCAC 421 .0004		11:16 NCR 1288	11:30 NCR 2301	*	Approve	08/21/97			12:07 NCR 561	

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					Action	Date				
10 NCAC 42J 0005		11 16 NCR 1288	11:30 NCR 2301	*	Object	08/21/97				
<b>INSURANCE</b>										
N.C. Home Inspector Licensure Board										
11 NCAC 08 1001				*	Agency Withdrawn 03/97	06/19/97			12 03 NCR 213	11 27 NCR 2049 Temp Filed over obj
11 NCAC 08 1002		11 15 NCR 1212	11:25 NCR 1906	*	Approve	06/19/97				Temp Filed over obj
11 NCAC 08 1003		11 15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1004		11 15 NCR 1212	11:25 NCR 1906	*	Approve	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1005		11 15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97	*		12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1006		11 15 NCR 1212	11:25 NCR 1906	*	Approve	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1007		11 15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1008		11 15 NCR 1212	11:25 NCR 1906	*	Approve	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1009		11 15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1010		11 15 NCR 1212	11:25 NCR 1906	*	Approve	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1011		11 15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1101		11 15 NCR 1212	11:25 NCR 1906	*	Approve	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1102		11 15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1103		11 15 NCR 1212	11:25 NCR 1906	*	Approve	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1104		11 15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1105		11 15 NCR 1212	11:25 NCR 1906	*	Approve	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1106		11 15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97	*		12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1107		11 15 NCR 1212	11:25 NCR 1906	*	Approve	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1108		11 15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12 03 NCR 213	Temp Filed over obj
11 NCAC 08 1109		11 15 NCR 1212	11:25 NCR 1906	*	Approve	06/19/97			12 03 NCR 213	Temp Filed over obj



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					Action	Date				
11 NCAC 08 .1110		11:15 NCR 1212	11:19 NCR 1416	*	Agency Withdrawn 03/97	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1111		11:15 NCR 1212	11:25 NCR 1906	*	Approve	06/19/97				
11 NCAC 08 .1112		11:15 NCR 1212	11:19 NCR 1416	*	Agency Withdrawn 03/97	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1113		11:15 NCR 1212	11:19 NCR 1416	*	Approve	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1114		11:15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1115		11:15 NCR 1212	11:19 NCR 1416	*	Approve	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1116		11:15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1201		11:15 NCR 1212	11:19 NCR 1416	*	Approve	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1202		11:15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1203		11:15 NCR 1212	11:19 NCR 1416	*	Approve	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1204		11:15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1205		11:15 NCR 1212	11:19 NCR 1416	*	Approve	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1206		11:15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1207		11:15 NCR 1212	11:19 NCR 1416	*	Approve	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1208		11:15 NCR 1212	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 08 .1209		11:15 NCR 1212	11:19 NCR 1416	*	Approve	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 10 .0602		11:15 NCR 1223	11:25 NCR 1906	*	Agency Withdrawn 03/97	06/19/97			12:03 NCR 213	Temp Filed over obj
11 NCAC 10 .0603		11:15 NCR 1223	11:19 NCR 1426	*	Approve	03/20/97	*		12:03 NCR 213	Temp Filed over obj
11 NCAC 10 .0606		11:15 NCR 1223	11:19 NCR 1426	*	Approve	03/20/97	*		12:03 NCR 213	Temp Filed over obj
12 NCAC 11	11:30 NCR 2300									
12 NCAC 11 .0202	10:24 NCR 3057		11:14 NCR 1136	*	Tabled	06/19/97			12:07 NCR 561	
					Approve	08/21/97				

## **JUSTICE**

### **Alarm Systems Licensing Board**

12 NCAC 11 11:30 NCR 2300  
12 NCAC 11 .0202 10:24 NCR 3057

### **Criminal Justice Education and Training Standards Commission**

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12 NCAC 09A .0103	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09B .0102	11:14 NCR 1109		11:20 NCR 1539	*	Object	04/17/97			11:30 NCR 2314	
12 NCAC 09B .0111	11:14 NCR 1109		11:20 NCR 1539	*	Approve	05/15/97	*		11:29 NCR 2211	
12 NCAC 09B .0206	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09B .0224	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09B .0225	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09B .0409	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09C .0304	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09C .0307	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09C .0309	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97	*		11:29 NCR 2211	
12 NCAC 09C .0601	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09C .0602	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09C .0603	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09C .0604	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09C .0605	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09C .0606	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09C .0607	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
12 NCAC 09C .0608	11:14 NCR 1109		11:20 NCR 1539	*	Approve	04/17/97			11:29 NCR 2211	
<b>Private Protective Services Board</b>										
12 NCAC 07D	11:10 NCR 818									
12 NCAC 07D	11:16 NCR 1268									
12 NCAC 07D .0100	11:16 NCR 1268									
12 NCAC 07D .0104	11:16 NCR 1268									
12 NCAC 07D .0201	11:10 NCR 818									
12 NCAC 07D .0204	11:14 NCR 1108									
12 NCAC 07D .0504	11:10 NCR 818									
12 NCAC 07D .0701	11:10 NCR 818									
12 NCAC 07D .0801	11:10 NCR 818									
12 NCAC 07D .0902	11:10 NCR 818									

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					Action	Date				
12 NCAC 07D .1106	11:14 NCR 1108									
<b>Sheriffs' Education and Training Standards Commission</b>										
12 NCAC 10B .0101	12:04 NCR 242									
12 NCAC 10B .0103	12:07 NCR 508									
12 NCAC 10B .0202	12:04 NCR 242									
12 NCAC 10B .0204	12:04 NCR 242									
12 NCAC 10B .0206	12:04 NCR 242									
12 NCAC 10B .0304	12:04 NCR 242									
12 NCAC 10B .0401	12:07 NCR 508									
12 NCAC 10B .0402	12:07 NCR 508									
12 NCAC 10B .0403	12:07 NCR 508									
12 NCAC 10B .0406	12:07 NCR 508									
12 NCAC 10B .0407	12:07 NCR 508									
12 NCAC 10B .0408	12:07 NCR 508									
12 NCAC 10B .0409	12:07 NCR 508									
12 NCAC 10B .0505	12:04 NCR 242									
12 NCAC 10B .0601	12:04 NCR 242									
12 NCAC 10B .0603	12:04 NCR 242									
12 NCAC 10B .0605	12:04 NCR 242									
12 NCAC 10B .0701	12:07 NCR 508									
12 NCAC 10B .0702	12:04 NCR 242									
12 NCAC 10B .0702	12:07 NCR 508									
12 NCAC 10B .0703	12:04 NCR 242									
12 NCAC 10B .0704	12:04 NCR 242									
12 NCAC 10B .0705	12:04 NCR 242									
12 NCAC 10B .0706	12:04 NCR 242									
12 NCAC 10B .0801	12:04 NCR 242									
12 NCAC 10B .0802	12:04 NCR 242									
12 NCAC 10B .0903	12:04 NCR 242									
12 NCAC 10B .0908	12:04 NCR 242									



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12 NCAC 10B .0909	12:04 NCR 242									
12 NCAC 10B .0910	12:04 NCR 242									
12 NCAC 10B .0911	12:04 NCR 242									
12 NCAC 10B .1002	12:04 NCR 242									
12 NCAC 10B .1004	12:04 NCR 242									
12 NCAC 10B .1005	12:04 NCR 242									
12 NCAC 10B .1006	12:04 NCR 242									
12 NCAC 10B .1101	12:04 NCR 242									
12 NCAC 10B .1101	12:07 NCR 508									
12 NCAC 10B .1102	12:04 NCR 242									
12 NCAC 10B .1102	12:07 NCR 508									
12 NCAC 10B .1103	12:04 NCR 242									
12 NCAC 10B .1103	12:07 NCR 508									
12 NCAC 10B .1104	12:04 NCR 242									
12 NCAC 10B .1104	12:07 NCR 508									
12 NCAC 10B .1105	12:04 NCR 242									
12 NCAC 10B .1202	12:04 NCR 242									
12 NCAC 10B .1204	12:04 NCR 242									
12 NCAC 10B .1205	12:04 NCR 242									
12 NCAC 10B .1206	12:04 NCR 242									
12 NCAC 10B .1301	12:07 NCR 508									
12 NCAC 10B .1302	12:07 NCR 508									
12 NCAC 10B .1303	12:07 NCR 508									
12 NCAC 10B .1304	12:07 NCR 508									
12 NCAC 10B .2002	12:07 NCR 508									
12 NCAC 10B .2101	12:07 NCR 508									
12 NCAC 10B .2102	12:07 NCR 508									
12 NCAC 10B .2104	12:07 NCR 508									
12 NCAC 10B .2105	12:07 NCR 508									

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					Action	Date				
12 NCAC 04E .0103	11:11 NCR 881		11:17 NCR 1339	*	Approve	05/15/97			11:30 NCR 2314	
12 NCAC 04E .0104	11:17 NCR 1336		11:22 NCR 1710	*	Approve	07/17/97	*		12:04 NCR 317	
12 NCAC 04E .0401	11:17 NCR 1336		11:22 NCR 1710	*	Approve	07/17/97			12:04 NCR 317	
12 NCAC 04E .0404	11:17 NCR 1336		11:22 NCR 1710	*	Approve	07/17/97	*		12:04 NCR 317	
12 NCAC 04E .0405	11:17 NCR 1336		11:22 NCR 1710	*	Approve	07/17/97	*		12:04 NCR 317	
<b>LABOR</b>										
<b>Boiler &amp; Pressure Vessel</b>										
13 NCAC 13 .0213		11:25 NCR 1918								
<b>Occupational Safety and Health</b>										
13 NCAC 07A .0302	11:26 NCR 1984		12:03 NCR 170	*						
13 NCAC 07A .0708	11:26 NCR 1984		12:03 NCR 170	*						
13 NCAC 07A .0900	11:11 NCR 881									
13 NCAC 07F	11:03 NCR 106									
13 NCAC 07F .0101	11:24 NCR 1817		12:05 NCR 354	*						
13 NCAC 07F .0101	11:26 NCR 1984		12:03 NCR 170	*						
13 NCAC 07F .0102	11:26 NCR 1984		12:03 NCR 170	*						
13 NCAC 07F .0201	11:03 NCR 106									
13 NCAC 07F .0201	11:09 NCR 568									
13 NCAC 07F .0201	11:24 NCR 1817		12:02 NCR 60	*						
13 NCAC 07F .0201	11:26 NCR 1984		12:03 NCR 170	*						
13 NCAC 07F .0301	11:03 NCR 106									
13 NCAC 07F .0301	11:26 NCR 1984		12:03 NCR 170	*						
13 NCAC 07F .0426	11:26 NCR 1984		12:03 NCR 170	*						
13 NCAC 07F .0501	11:26 NCR 1984		12:03 NCR 170	*						
13 NCAC 07F .0502	11:26 NCR 1984		12:03 NCR 170	*						
13 NCAC 16 .0101	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0102	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0103	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0201	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0202	11:26 NCR 1984		12:05 NCR 412	*						

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					Action	Date				
13 NCAC 16 .0203	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0204	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0205	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0206	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0207	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0208	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0301	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0302	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0303	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0401	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0402	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0501	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0502	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0601	11:26 NCR 1984		12:05 NCR 412	*						
13 NCAC 16 .0602	11:26 NCR 1984		12:05 NCR 412	*						
<b>MEDICAL BOARD</b>										
21 NCAC 32B	11:18 NCR 1369									
21 NCAC 32B	12:04 NCR 245									
21 NCAC 32F .0103		11:18 NCR 1386 Temp Expired	12:04 NCR 294	*						
21 NCAC 32H .0102	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0201	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0202	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0203	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0301	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0302	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0303	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0401	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0402	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0402		12:04 NCR 314								



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21 NCAC 32H .0403	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0404	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0405	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0406	11:26 NCR 1986		12:04 NCR 294	L						
21 NCAC 32H .0407	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0408	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0409	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0501	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0502	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0503	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0504	11:26 NCR 1986		12:04 NCR 294	L						
21 NCAC 32H .0505	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0506	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0507	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0508	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0601	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0602	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0801	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .0901	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32H .1004	11:26 NCR 1986		12:04 NCR 294	*						
21 NCAC 32O	11:18 NCR 1369		12:04 NCR 294	*						
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21 NCAC 34A .0201		12:07 NCR 556								
<b>NURSING, BOARD OF</b>										
21 NCAC 36 .0109	11:24 NCR 1821		11:28 NCR 2130	*						
21 NCAC 36 .0227	12:05 NCR 338									
21 NCAC 36 .0320	11:14 NCR 1109		11:19 NCR 1428	*	Object Approve	03/20/97 04/17/97	*		11:29 NCR 2211	
21 NCAC 36 .0601	12:01 NCR 5		12:06 NCR 479	*						
21 NCAC 36 .0602	12:01 NCR 5		12:06 NCR 479	*						

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21 NCAC 36 .0603	12:01 NCR 5		12:06 NCR 479	*						
21 NCAC 36 .0604	12:01 NCR 5		12:06 NCR 479	*						
21 NCAC 36 .0605	12:01 NCR 5		12:06 NCR 479	*						
21 NCAC 36 .0606	12:01 NCR 5		12:06 NCR 479	*						
<b>NURSING HOME ADMINISTRATORS</b>										
21 NCAC 37D .0202		11:11 NCR 940	11:18 NCR 1372	*	Approve	04/17/97	*		11:29 NCR 2211	
21 NCAC 37G .0102		11:11 NCR 940	11:18 NCR 1372	*	Approve	04/17/97			11:29 NCR 2211	
<b>OPTICIANS, BOARD OF</b>										
21 NCAC 40 .0108		12:07 NCR 557								
<b>OPTOMETRY, BOARD OF</b>										
21 NCAC 42	12:06 NCR 453									
21 NCAC 42B .0107	11:18 NCR 1369		11:25 NCR 1917	*						
21 NCAC 42E .0102		12:06 NCR 487								
<b>PHARMACY, BOARD OF</b>										
21 NCAC 46 .1601	12:03 NCR 168		12:07 NCR 527	*						
21 NCAC 46 .1603	12:03 NCR 168		12:07 NCR 527	*						
21 NCAC 46 .1604	12:03 NCR 168		12:07 NCR 527	*						
21 NCAC 46 .1804	12:03 NCR 168		12:07 NCR 527	*						
21 NCAC 46 .1810	12:03 NCR 168		12:07 NCR 527	*						
21 NCAC 46 .1813	12:03 NCR 168		12:07 NCR 527	*						
21 NCAC 46 .2103	12:03 NCR 168		12:07 NCR 527	*						
21 NCAC 46 .2201	12:03 NCR 168		12:07 NCR 527	*						
21 NCAC 46 .2301	12:03 NCR 168		12:07 NCR 527	*						
<b>PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, EXAMINERS OF</b>										
21 NCAC 50 .0106	12:07 NCR 509									
21 NCAC 50 .0202	12:07 NCR 509									
21 NCAC 50 .0301	12:07 NCR 509	12:07 NCR 557								
21 NCAC 50 .0306	12:07 NCR 509	12:07 NCR 557								
21 NCAC 50 .0404	12:07 NCR 509	12:07 NCR 557								

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21 NCAC 50 .0405	12:07 NCR 509									
21 NCAC 50 .0506	12:07 NCR 509	12:07 NCR 557								
21 NCAC 50 .0510	12:07 NCR 509									
21 NCAC 50 .0511	12:07 NCR 509	12:07 NCR 557								
21 NCAC 50 .1102	12:07 NCR 509	12:07 NCR 557								
21 NCAC 50 .1104	12:07 NCR 509									
21 NCAC 50 .1201	12:07 NCR 509									
21 NCAC 50 .1205	12:07 NCR 509									
21 NCAC 50 .1206	12:07 NCR 509									
21 NCAC 50 .1210	12:07 NCR 509									
21 NCAC 50 .1212	12:07 NCR 509									
21 NCAC 50 .1302	12:07 NCR 509									

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21 NCAC 54 .1611	12:05 NCR 338									
21 NCAC 54 .1612	12:05 NCR 338									
21 NCAC 54 .1613	12:05 NCR 338									
21 NCAC 54 .2006	12:05 NCR 338									
21 NCAC 54 .2010	12:05 NCR 338									
21 NCAC 54 .2104	12:05 NCR 338									
21 NCAC 54 .2301	12:05 NCR 338									
21 NCAC 54 .2302	12:05 NCR 338									
21 NCAC 54 .2303	12:05 NCR 338									
21 NCAC 54 .2304	12:05 NCR 338									
21 NCAC 54 .2305	12:05 NCR 338									
21 NCAC 54 .2306	12:05 NCR 338									
21 NCAC 54 .2307	12:05 NCR 338									
21 NCAC 54 .2308	12:05 NCR 338									
21 NCAC 54 .2309	12:05 NCR 338									
21 NCAC 54 .2310	12:05 NCR 338									
21 NCAC 54 .2311	12:05 NCR 338									



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21 NCAC 54 .2312	12.05 NCR 338									
21 NCAC 54 .2313	12.05 NCR 338									
21 NCAC 54 .2314	12.05 NCR 338									
21 NCAC 54 .2401	12.05 NCR 338									
21 NCAC 54 .2402	12.05 NCR 338									
21 NCAC 54 .2501	12.05 NCR 338									
21 NCAC 54 .2502	12.05 NCR 338									
21 NCAC 54 .2503	12.05 NCR 338									
21 NCAC 54 .2504	12.05 NCR 338									
21 NCAC 54 .2505	12.05 NCR 338									
21 NCAC 54 .2601	12.05 NCR 338									
21 NCAC 54 .2602	12.05 NCR 338									
21 NCAC 54 .2704	12.05 NCR 338									
21 NCAC 54 .2705	12.05 NCR 338									
21 NCAC 54 .2706	12.05 NCR 338									
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16 NCAC 06C .0307			12.01 NCR 18	*						
16 NCAC 06C .0310			12.01 NCR 18	*						
16 NCAC 06D .0103		12.03 NCR 210	12.01 NCR 18	*						
16 NCAC 06D .0301			12.01 NCR 18	*						
16 NCAC 06D .0303			12.01 NCR 18	*						
16 NCAC 06D .0305			12.01 NCR 18	*						
16 NCAC 06D .0306			12.01 NCR 18	*						
16 NCAC 06E .0105		12.05 NCR 433	12.01 NCR 18							
16 NCAC 06G .0304			12.01 NCR 18	S						
16 NCAC 06G .0305			12.01 NCR 18	*						
16 NCAC 06G .0306			12.01 NCR 18	*						
16 NCAC 06G .0307			12.01 NCR 18	S						
16 NCAC 06G .0308			12.01 NCR 18	S						

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16 NCAC 06G .0309			12:01 NCR 18	S						
16 NCAC 06G .0401			12:01 NCR 18	*						
16 NCAC 06G .0402			12:01 NCR 18	*						
16 NCAC 06G .0403			12:01 NCR 18	*						
16 NCAC 06G .0404			12:01 NCR 18	*						
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16 NCAC 07 .0201		12:07 NCR 533								
16 NCAC 07 .0202		12:07 NCR 533								
16 NCAC 07 .0301		12:07 NCR 533								
16 NCAC 07 .0302		12:07 NCR 533								
16 NCAC 07 .0303		12:07 NCR 533								
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21 NCAC 58A .0302	10:22 NCR 2829		11:03 NCR 114	*	Object	12/19/96	*		11:22 NCR 1717	
21 NCAC 58A .1501	10:22 NCR 2829		11:03 NCR 114	*	Approve	01/16/97	*			
21 NCAC 58A .1502	10:22 NCR 2829		11:03 NCR 114	*	Object	12/19/96	*		11:22 NCR 1717	
				*	Approve	01/16/97	*		11:22 NCR 1717	
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17 NCAC 01C .0506			11:10 NCR 838	*	Approve	01/16/97	*		11:22 NCR 1717	12:04 NCR 228
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Tax Review Board										
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18 NCAC 06 .1104		12:07 NCR 534								12:05 NCR 336
18 NCAC 06 .1205		12:07 NCR 534								
18 NCAC 06 .1206		12:07 NCR 534								
18 NCAC 06 .1211		12:07 NCR 534								
18 NCAC 06 .1212		12:07 NCR 534								
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18 NCAC 06 .1401		12:07 NCR 534								
18 NCAC 06 .1410		12:07 NCR 534								

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18 NCAC 06 1411		12-07 NCR 534								
18 NCAC 06 1412		12-07 NCR 534								
18 NCAC 06 1506		12-07 NCR 534								
18 NCAC 06 1509		12-07 NCR 534								
18 NCAC 06 1702		12-07 NCR 534								
18 NCAC 06 1703		12-07 NCR 534								
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18 NCAC 06 1801		12-07 NCR 534								
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18 NCAC 06 1804		12-07 NCR 534								
18 NCAC 06 1805		12-07 NCR 534								
18 NCAC 06 1806		12-07 NCR 534								
18 NCAC 06 1809		12-07 NCR 534								
18 NCAC 06 1811		12-07 NCR 534								

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21 NCAC 64 0209	11-23 NCR 1780	12-05 NCR 427	*
21 NCAC 64 0303	11-23 NCR 1780		
21 NCAC 64 1001	11-23 NCR 1780	12-05 NCR 427	*
21 NCAC 64 1002	11-23 NCR 1780	12-05 NCR 427	*
21 NCAC 64 1003	11-23 NCR 1780	12-05 NCR 427	*
21 NCAC 64 1004	11-23 NCR 1780	12-05 NCR 427	*
21 NCAC 64 1005	11-23 NCR 1780	12-05 NCR 427	*

## STATE PERSONNEL COMMISSION



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25 NCAC 01D .2501		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01D .2503		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01D .2504		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01D .2505		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01D .2507		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01D .2508		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01D .2509		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01D .2511		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01D .2513		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01D .2514		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01D .2516		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01E .0705	11:14 NCR 1110		11:19 NCR 1434	*						
25 NCAC 01E .0707	11:14 NCR 1110		11:19 NCR 1434	*						
25 NCAC 01E .0709	11:14 NCR 1110		11:19 NCR 1434	*						
<b>TRANSPORTATION</b>										
<b>Highways, Division of</b>										
19A NCAC 02B .0164	11:20 NCR 1537		11:26 NCR 1991	*	Object Approve	07/17/97 08/21/97			12:07 NCR 561	
19A NCAC 02B .0242	11:26 NCR 1986		12:03 NCR 207	*						
19A NCAC 02B .0303	11:26 NCR 1986		12:03 NCR 207	*						
19A NCAC 02D .0415	11:20 NCR 1537		11:26 NCR 2004	*	Approve	07/17/97			12:04 NCR 317	
19A NCAC 02E .0218	12:05 NCR 337									
19A NCAC 02E .0219	12:05 NCR 337									
19A NCAC 02E .0220	12:05 NCR 337									
19A NCAC 02E .0221	12:05 NCR 337									
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19A NCAC 031 .0100	11:19 NCR 1413									
19A NCAC 031 .0200	11:19 NCR 1413									
19A NCAC 031 .0300	11:19 NCR 1413									
19A NCAC 031 .0400	11:19 NCR 1413									
19A NCAC 031 .0500	11:19 NCR 1413									
19A NCAC 031 .0600	11:19 NCR 1413									
19A NCAC 031 .0700	11:19 NCR 1413									
19A NCAC 031 .0800	11:19 NCR 1413									
19A NCAC 03J .0102	11:11 NCR 882		11:17 NCR 1340	*	Approve	02/20/97	*		11:24 NCR 1832	
19A NCAC 03J .0306	11:11 NCR 882		11:17 NCR 1340	*	Object	02/20/97	*			
				*	Approve	03/20/97			11:26 NCR 2004	
19A NCAC 03J .0308	11:11 NCR 882		11:17 NCR 1340	*	Object	02/20/97	*			
				*	Approve	03/20/97	*		11:26 NCR 2004	
19A NCAC 03J .0601	11:11 NCR 882		11:17 NCR 1340	*	Approve	02/20/97	*		11:24 NCR 1832	

# BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1997

DESCRIPTION	CODE	ANNUAL SUBSCRIPTION PRICE
<b>Title 1 - Dept. of Administration - Complete Title</b>	<b>201 00 001</b>	<b>\$90.00</b>
Division of Purchase & Contract	201 10 051	\$30.00
Federal Block Grant Funds	201 10 331	\$25.00
<b>Title 2 - Dept. of Agriculture - Complete Title</b>	<b>202 00 001</b>	<b>\$140.00</b>
Food & Drug Protection Division	202 15 091	\$35.00
Structural Pest Control Committee	202 15 341	\$30.00
Agricultural Markets	202 15 431	\$30.00
Plant Industry	202 15 481	\$30.00
Animal Industry	202 15 521	\$30.00
<b>Title 3 - Dept. of State Auditor - Complete Title</b>	<b>203 00 001</b>	<b>\$25.00</b>
<b>Title 4 - Dept. of Commerce - Complete Title</b>	<b>204 00 001</b>	<b>\$125.00</b>
Alcoholic Beverage Control Commission	204 15 021	\$45.00
Banking Commission	204 15 031	\$45.00
Credit Union Division	204 15 061	\$25.00
Savings & Loan Division	204 15 091	\$25.00
Industrial Commission/Workers Compensation	204 15 101	\$30.00
Savings Institutions Division	204 15 161	\$35.00
<b>Title 5 - Dept. of Corrections - Complete Title</b>	<b>205 00 001</b>	<b>\$70.00</b>
Division of Prisons	205 15 021	\$35.00
<b>Title 6 - Council of State - Complete Title</b>	<b>206 00 001</b>	<b>\$30.00</b>
<b>Title 7 - Dept. of Cultural Resources - Complete Title</b>	<b>207 00 001</b>	<b>\$60.00</b>
<b>Title 8 - State Board of Elections - Complete Title</b>	<b>208 00 001</b>	<b>\$30.00</b>
<b>Title 9 - Offices of the Governor &amp; Lt. Governor - Complete Title</b>	<b>209 00 001</b>	<b>\$45.00</b>
<b>Title 10 - Dept. of Human Resources - Complete Title</b>	<b>210 00 001</b>	<b>\$470.00</b>
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Detention Facilities	210 20 201	\$40.00
Mental Health & Rehabilitation Services	210 20 301	\$110.00
Social Services	210 20 401	\$185.00
Children Services/Day Care	210 20 411	\$55.00
Services for the Aging	210 20 421	\$45.00
Services for the Blind	210 20 431	\$40.00
Services for the Deaf & Hard of Hearing	210 20 441	\$25.00
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<b>Title 11 - Dept. of Insurance - Complete Title</b>	<b>211 00 001</b>	<b>\$90.00</b>
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Fire & Rescue Services	211 10 051	\$25.00
Agent Services	211 10 061	\$35.00
Engineering & Building Codes	211 10 081	\$30.00
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Police & Sheriff's Education & Training Standards	212 10 091	\$40.00
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Boiler & Pressure Vessel Safety	213 15 131	\$25.00
Apprenticeship & Training	213 15 141	\$25.00
Elevator & Amusement Device Safety	213 15 151	\$25.00
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Air Quality	215 15 101	\$90.00
Water Quality	215 15 201	\$85.00
Land & Waste Management	215 15 301	\$85.00
Solid Waste Management	215 15 311	\$50.00



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Radiation/Nuclear Waste	215 25 101	\$65.00
Sanitation	215 25 201	\$60.00
Public Health	215 25 301	\$85.00
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<b>Title 19A - Dept. of Transportation - Complete Title</b>	<b>219 00 001</b>	<b>\$90.00</b>
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Division of Motor Vehicles	219 10 031	\$45.00
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<b>Title 21 - Occupational Licensing Boards - Complete Title</b>	<b>221 00 001</b>	<b>\$230.00</b>
<b>Title 22 - Administrative Procedures - Repealed</b>	<b>n/a</b>	
<b>Title 23 - Community Colleges - Complete Title</b>	<b>223 00 001</b>	<b>\$45.00</b>
<b>Title 24 - Independent Agencies - Complete Title</b>	<b>224 00 001</b>	<b>\$40.00</b>
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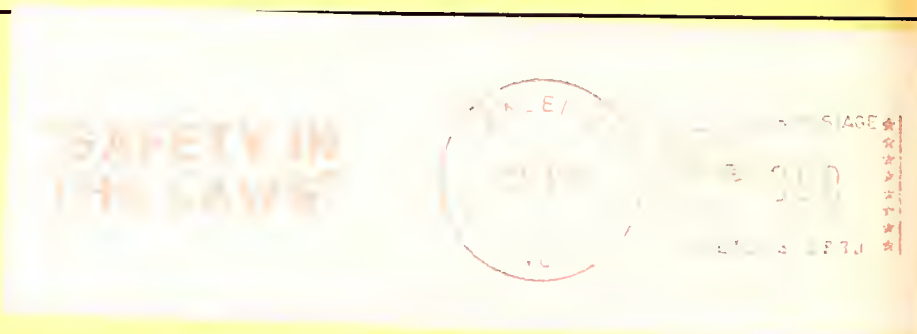
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